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# TEXAS REGISTER

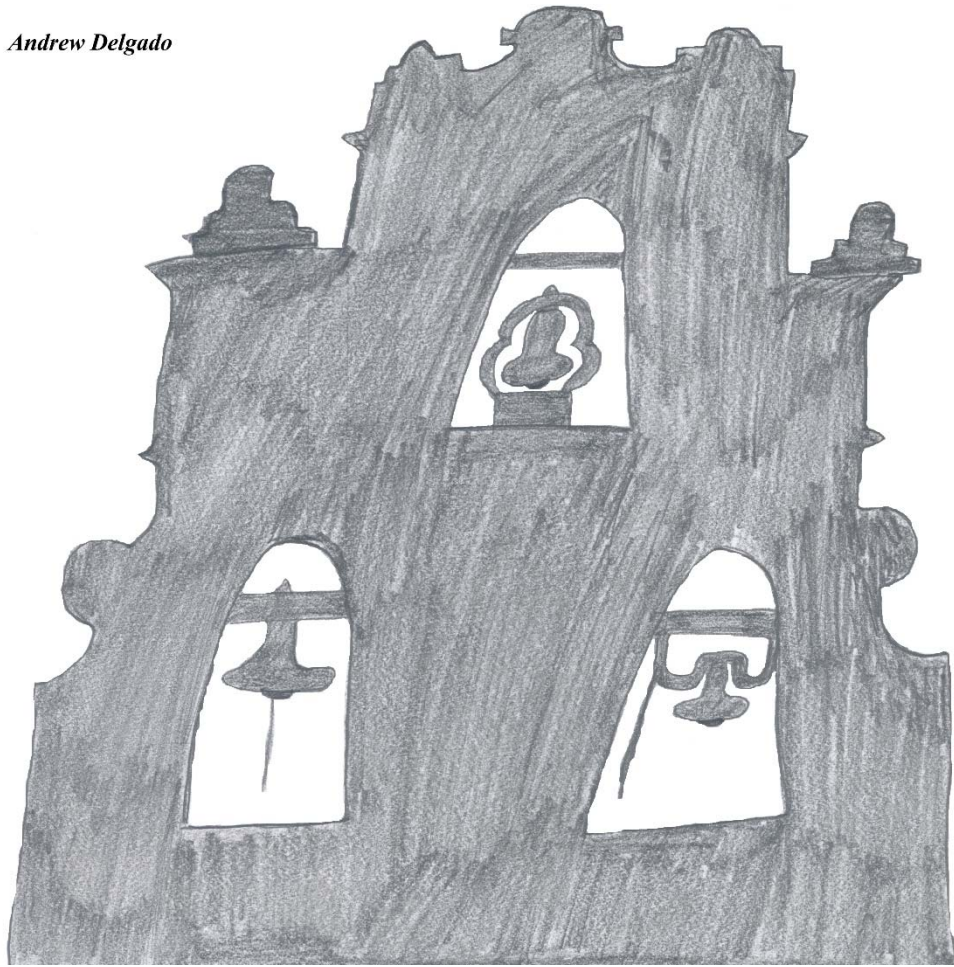
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*Andrew Delgado*



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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# TEXAS REGISTER

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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.state.tx.us](mailto:register@sos.state.tx.us)

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

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

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://texasattorneygeneral.gov/og/open-government>

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

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

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

# THE GOVERNOR

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

## Proclamation 41-3548

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that Tropical Depression Harvey poses a threat of imminent disaster, including severe flooding, storm surge and damaging winds, in the counties of Aransas, Austin, Bee, Calhoun, Chambers, Colorado, Brazoria, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Harris, Jackson, Jefferson, Jim Wells, Karnes, Kleberg, Lavaca, Liberty, Live Oak, Matagorda, Nueces, Refugio, San Patricio, Victoria, Waller, Wharton, and Wilson, beginning August 23, 2017.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the previously listed counties based on the existence of such threat.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 23rd day of August, 2017.

Greg Abbott, Governor

TRD-201703308



## Proclamation 41-3549

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, did issue a disaster proclamation on August 23, 2017, certifying that Tropical Depression Harvey poses a threat of imminent disaster in specified counties; and

WHEREAS, Tropical Depression Harvey has since been upgraded to a hurricane and is likely to make landfall in Texas as a major hurricane; and

WHEREAS, the threat of imminent disaster caused by Hurricane Harvey is creating a temporary housing emergency in the state.

THEREFORE, in accordance with the Disaster Proclamation and with the authority vested in me by Section 418.020(c) of the Texas Government Code, I do hereby suspend all laws authorizing or requiring the collection of state or local hotel or motel occupancy taxes from the victims of Hurricane Harvey or personnel participating in relief operations, for a period of 14 days, beginning August 23, 2017, and ending September 6, 2017.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 25th day of August, 2017.

Greg Abbott, Governor

TRD-201703361



## Proclamation 41-3550

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on Wednesday, August 23, 2017, certifying that Hurricane Harvey posed a threat of imminent disaster, including severe flooding, storm surge and damaging winds, for Aransas, Austin, Bee, Brazoria, Calhoun, Chambers, Colorado, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Harris, Jackson, Jasper, Jefferson, Jim Wells, Karnes, Kleberg, Lavaca, Liberty, Live Oak, Matagorda, Nueces, Refugio, San Patricio, Victoria, Walker, Wharton, and Wilson counties. Those same conditions continue to exist in these and other counties in Texas.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend the aforementioned proclamation and declare a disaster in these additional counties: Atascosa, Bexar, Brazos, Caldwell, Cameron, Comal, Grimes, Guadalupe, Hardin, Jasper, Kerr, Lee, Leon, Madison, Montgomery, Newton, Tyler, Walker, Washington and Willacy.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 26th day of August, 2017.

Greg Abbott, Governor  
TRD-201703362



Proclamation 41-3551

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on August 23, 2017, certifying that Hurricane Harvey posed a threat of imminent disaster, including severe flooding, storm surge and damaging winds, for Aransas, Atascosa, Austin, Bee, Bexar, Brazoria, Brazos, Caldwell, Calhoun, Cameron, Chambers, Colorado, Comal, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Grimes, Guadalupe, Hardin, Harris, Jackson, Jasper, Jefferson, Jim Wells, Karnes, Kerr, Kleberg, Lavaca, Lee, Leon, Liberty, Live Oak, Madison, Matagorda, Montgomery, Newton, Nueces, Refugio, San Patricio, Tyler, Victoria, Walker, Waller, Washington, Wharton, Willacy and Wilson counties. Those same conditions continue to exist in these and other counties in Texas.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend the aforementioned proclamation and declare a disaster in Bastrop, Burleson, Polk and San Jacinto counties in the state of Texas.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 27th day of August, 2017.

Greg Abbott, Governor  
TRD-201703363



Proclamation 41-3552

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on August 23, 2017, certifying that Hurricane Harvey posed a threat of imminent disaster, including severe flooding, storm surge and damaging winds, for Aransas, Atascosa, Austin, Bastrop, Bee, Bexar, Brazoria, Brazos, Burleson, Caldwell, Calhoun, Cameron, Chambers, Colorado, Comal, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Grimes, Guadalupe, Hardin, Harris, Jackson, Jasper, Jefferson, Jim Wells, Karnes, Kerr, Kleberg, Lavaca, Lee,

Leon, Liberty, Live Oak, Madison, Matagorda, Montgomery, Newton, Nueces, Polk, Refugio, San Jacinto, San Patricio, Tyler, Victoria, Walker, Waller, Washington, Wharton, Willacy and Wilson counties. Those same conditions continue to exist in these and other counties in Texas.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the

Texas Government Code, I do hereby amend the aforementioned proclamation and declare a disaster in Angelina, Orange, Sabine and Trinity counties in the state of Texas.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 28th day of August, 2017.

Greg Abbott, Governor  
TRD-201703401



Proclamation 41-3553

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, did issue a disaster proclamation on Wednesday, August 23, 2017, certifying that Tropical Depression Harvey posed a threat of imminent disaster in specified counties in Texas; and

WHEREAS, Tropical Depression Harvey has since been upgraded to a hurricane which struck the Texas coast on Friday, August 25, 2017, causing substantial destruction in South, East and Central Texas; and

WHEREAS, extensive damage in Texas as a result of Hurricane Harvey has caused widespread power outages that currently hinder the delivery of emergency services and recovery efforts; and

WHEREAS, the expeditious restoration of electrical services is crucial for the health, safety, and welfare of the citizens of Texas, and for the preservation of life and property in the recovery efforts from the devastating effects of Hurricane Harvey; and

WHEREAS, Texas Government Code, Section 418.017, provides that the Governor may use all available resources of state government and of political subdivisions that are reasonably necessary to cope with a disaster; temporarily reassign resources, personnel, or functions of state executive departments and agencies or their units for the purpose of performing or facilitating emergency services; and use any private property necessary to cope with the disaster.

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.017 of the Texas Government Code, I do hereby order the following:

**Temporary Utility Connections.** Utilities located in the State of Texas and regulated by the Public Utility Commission of Texas are hereby authorized to make temporary connections at the distribution and transmission level, voltages such as 12.5 kV, 13.2 kV, 25 kV, 34.5 kV, 69 kV, 138 kV, 230 kV, and 345 kV to restore power to electric service providers, electric cooperatives, and municipal customers within the State of Texas. This temporary action will allow faster restoration of critical infrastructure facilities and other customers that have been without power as a result of Hurricane Harvey.

**Authorization to Enter and Use Property.** Those utilities are hereby authorized to enter and use private property as necessary for the limited purpose of connecting power lines and reconstructing the electric utility grid, including but not limited to establishing temporary above-ground and underground power lines, switching and transforming facilities, and transporting materials and equipment necessary to the restoration of electrical power.

**Protection of Private Property Rights.** Those utilities are further directed to undertake the restoration effort in a manner that maximizes

the use of existing state and local government resources, easements, and property to preserve the property and privacy rights of affected Texans to the greatest extent possible.

**Public Easements.** State and local political subdivisions and special districts are hereby directed to temporarily provide full and complete access to existing highway, utility, and other public easements and state-owned or controlled land for these same purposes, and for only the duration in which this specific declaration remains in effect.

This proclamation shall continue in effect as long as a state of emergency and the Emergency Disaster Proclamation previously issued remains in effect, unless rescinded earlier by my order.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 28th day of August, 2017.

Greg Abbott, Governor

TRD-201703402





# THE ATTORNEY GENERAL

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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>.)

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Requests for Opinions

**RQ-0176-KP**

**Requestor:**

The Honorable Roland Gutierrez

Chair, Committee on Defense and Veterans' Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether veterans with Veterans Affairs home loans may execute  
a cash-out refinance loan on their homestead property (RQ-0176-KP)

**Briefs requested by September 22, 2017**

*For further information, please access the website at [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) or call the Opinion Committee at (512) 463-2110.*

TRD-201703344

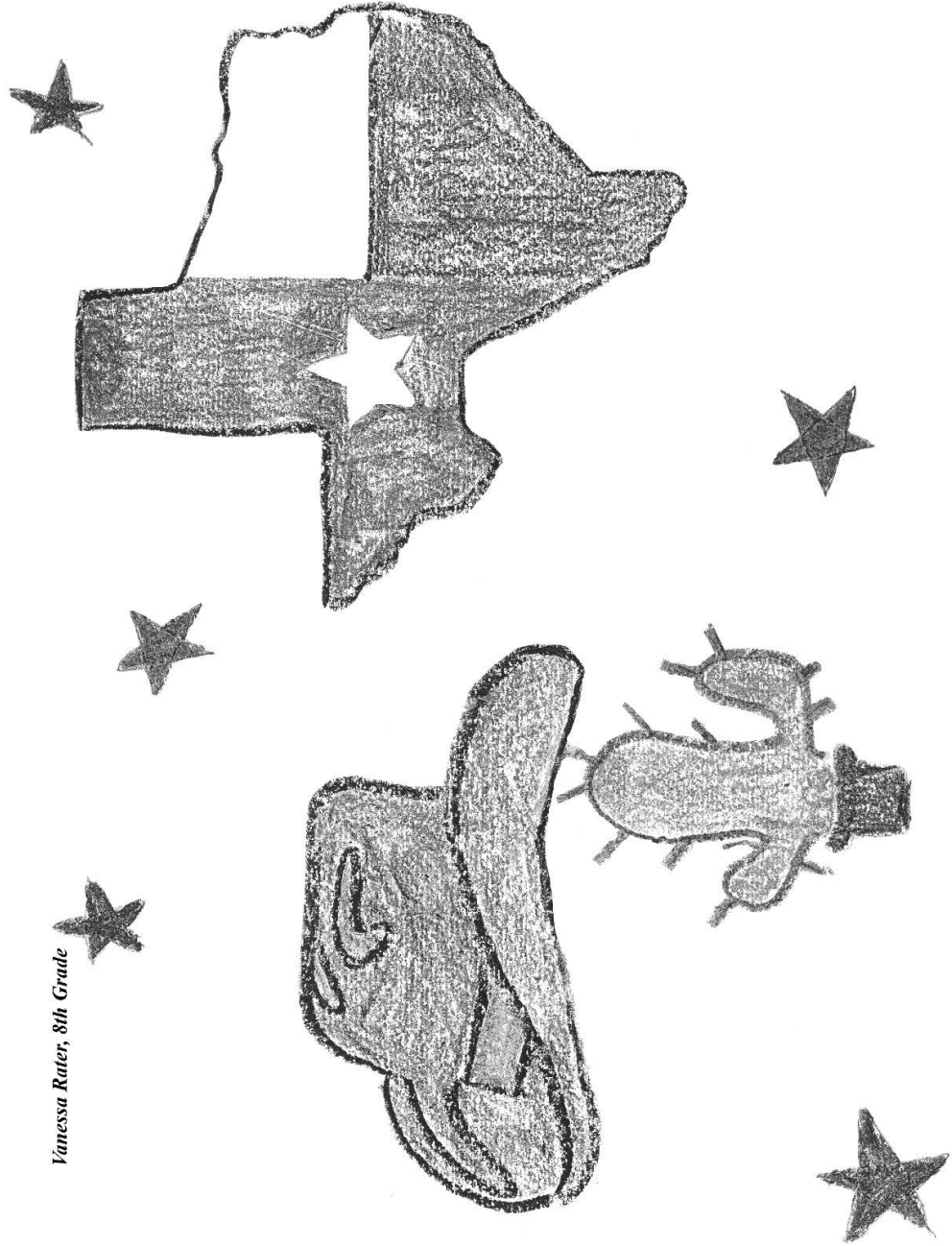
Amanda Crawford

General Counsel

Office of the Attorney General

Filed: August 25, 2017





*Vanessa Rater, 8th Grade*



# EMERGENCY RULES

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

## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 133. HOSPITAL LICENSING

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (DSHS) adopts, on an emergency basis, amendments to Title 25, Texas Administrative Code, §133.41, concerning Hospital Functions and Services, and §133.163, concerning Spatial Requirements for New Construction. As authorized by Government Code, §2001.034, the Executive Commissioner may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if a state or federal law requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code, §2001.034, may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

#### BACKGROUND AND PURPOSE

In October 2015, DSHS updated retail food safety rules by repealing Title 25, Texas Administrative Code, §§229.161 - 229.171 (relating to Texas Food Establishments) and replacing them with Title 25, Chapter 228 (relating to Retail Food). When these rules were repealed and replaced, rules in Title 25, Chapter 133 (relating to Hospital Licensing) that incorporated the old rules by reference were not updated to refer to the new rules in Chapter 228. Consequently, DSHS is unable to enforce violations of food safety rules by licensed hospitals. This lack of authority to enforce food safety rule violations by licensed hospitals presents an imminent peril to the health, safety, and welfare of the public and therefore requires immediate action.

The purpose of these emergency rule amendments is to update references to the current food safety rules in the hospital licensing rules, thereby allowing DSHS to enforce the hospital licensing rules relating to food safety in order to protect the health, safety, and welfare of the public.

#### SUBCHAPTER C. OPERATIONAL REQUIREMENTS

##### 25 TAC §133.41

##### STATUTORY AUTHORITY

The emergency rules are adopted under Government Code, §2001.034, and Health and Safety Code, §241.026 and §1001.075. Government Code, §2001.034, authorizes the adoption of emergency rules without prior notice or hearing, or with an abbreviated notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on

fewer than 30 days' notice. Health and Safety Code, §241.026, requires DSHS to develop, establish, and enforce standards for the construction, maintenance, and operation of licensed hospitals. Government Code, §531.0055, and Health and Safety Code, §1001.075, authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Health and Safety Code, Chapter 1001.

§133.41. *Hospital Functions and Services.*

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

(d) Dietary services. The hospital shall have organized dietary services that are directed and staffed by adequate qualified personnel. However, a hospital that has a contract with an outside food management company or an arrangement with another hospital may meet this requirement if the company or other hospital has a dietitian who serves the hospital on a full-time, part-time, or consultant basis, and if the company or other hospital maintains at least the minimum requirements specified in this section, and provides for the frequent and systematic liaison with the hospital medical staff for recommendations of dietetic policies affecting patient treatment. The hospital shall ensure that there are sufficient personnel to respond to the dietary needs of the patient population being served.

(1) (No change.)

(2) Director. The director shall:

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

(E) maintain authority and responsibility for the following, but not be limited to:

(i) - (vii) (No change.)

(viii) ensuring compliance with Chapter 228 of this title (relating to Retail Food) [ §§229.161 - 229.171 of this title (relating to Texas Food Establishments)].

(3) (No change.)

(e) - (y) (No change.)

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

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For further information, please call: (512) 776-6972

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## SUBCHAPTER I. PHYSICAL PLANT AND CONSTRUCTION REQUIREMENTS

### 25 TAC §133.163

The emergency rules are adopted under Government Code, §2001.034, and Health and Safety Code, §241.026 and §1001.075. Government Code, §2001.034, authorizes the adoption of emergency rules without prior notice or hearing, or with an abbreviated notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30 days' notice. Health and Safety Code, §241.026, requires DSHS to develop, establish, and enforce standards for the construction, maintenance, and operation of licensed hospitals. Government Code, §531.0055, and Health and Safety Code, §1001.075, authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Health and Safety Code, Chapter 1001.

§133.163. *Spatial Requirements for New Construction.*

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

(e) Dietary suite.

(1) Architectural requirements.

(A) General. Construction, equipment, and installation shall comply with Chapter 228 of this title (relating to Retail Food) [§§229.161 - 229.171 of this title (relating to Texas Food Establishments)].

(B) - (E) (No change.)

(2) - (5) (No change.)

(f) - (ff) (No change.)

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## CHAPTER 134. PRIVATE PSYCHIATRIC HOSPITALS AND CRISIS STABILIZATION UNITS

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (DSHS) adopts, on an emergency basis, amendments to Title 25, Texas Administrative Code, §134.41, concerning Facility Functions and Services, and §134.123, concerning Spatial Requirements for New Construction. As authorized by Government Code, §2001.034, the Executive Commissioner may

adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if a state or federal law requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code, §2001.034, may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

### BACKGROUND AND PURPOSE

In October 2015, DSHS updated retail food safety rules by repealing Title 25, Texas Administrative Code, §§229.161 - 229.171 (relating to Texas Food Establishments) and replacing them with Title 25, Chapter 228 (relating to Retail Food). When these rules were repealed and replaced, rules in Title 25, Chapter 134 (relating to Private Psychiatric Hospitals and Crisis Stabilization Units) that incorporated the old rules by reference were not updated to refer to the new rules in Chapter 228. Consequently, DSHS is unable to enforce violations of food safety rules by private psychiatric hospitals. This lack of authority to enforce food safety rule violations by private psychiatric hospitals presents an imminent peril to the health, safety, and welfare of the public and therefore requires immediate action.

The purpose of these emergency rule amendments is to update references to the current food safety rules in the private psychiatric hospital rules, thereby allowing DSHS to enforce the private psychiatric hospital rules relating to food safety in order to protect the health, safety, and welfare of the public.

## SUBCHAPTER C. OPERATIONAL REQUIREMENTS

### 25 TAC §134.41

#### STATUTORY AUTHORITY

The emergency rules are adopted under Government Code, §2001.034, and Health and Safety Code, §577.010 and §1001.075. Government Code, §2001.034, authorizes the adoption of emergency rules without prior notice or hearing, or with an abbreviated notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30 days' notice. Health and Safety Code, §577.010, requires DSHS to develop, establish, and enforce standards for the construction, maintenance, and operation of private mental hospitals. Government Code, §531.0055, and Health and Safety Code, §1001.075, authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Health and Safety Code, Chapter 1001.

§134.41. *Facility Functions and Services.*

(a) (No change.)

(b) Dietary services. The facility shall have organized dietary services that are directed and staffed by adequate qualified personnel. However, a facility that has a contract with an outside food management company or an arrangement with another facility may meet this requirement if the company or other facility has a dietitian who serves the facility on a full-time, part-time, or consultant basis, and if the company or other facility maintains at least the minimum requirements specified in this section, and provides for the frequent and systematic liaison with the facility medical staff for recommendations of dietetic policies affecting patient treatment. The facility shall ensure that there are sufficient personnel to respond to the dietary needs of the patient population being served.

(1) (No change.)

(2) Director. The director shall:

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

(E) maintain authority and responsibility for the following, but not be limited to:

(i) - (vi) (No change.)

(vii) ensuring compliance with Chapter 228 of this title (relating to Retail Food) [~~§§229.161 - 229.171 of this title (relating to Texas Food Establishments)~~].

(3) (No change.)

(c) - (p) (No change.)

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

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## SUBCHAPTER G. PHYSICAL PLANT AND CONSTRUCTION REQUIREMENTS

### 25 TAC §134.123

The emergency rules are adopted under Government Code, §2001.034, and Health and Safety Code, §577.010 and §1001.075. Government Code, §2001.034, authorizes the adoption of emergency rules without prior notice or hearing, or with an abbreviated notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30 days' notice. Health and Safety Code, §577.010, requires DSHS to develop, establish, and enforce standards for the construction, maintenance, and operation of private mental hospitals. Government Code, §531.0055, and Health and Safety Code, §1001.075, authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Health and Safety Code, Chapter 1001.

*§134.123. Spatial Requirements for New Construction.*

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

(d) Dietary suite.

(1) Architectural requirements.

(A) General. Construction, equipment, and installation shall comply with the standards specified in Chapter 228 of this title (relating to Retail Food) [~~§§229.161-229.171 of this title (relating to Rules on Food Service Sanitation)~~].

(B) - (E) (No change.)

(2) - (5) (No change.)

(e) - (p) (No change.)

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

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## CHAPTER 137. BIRTHING CENTERS SUBCHAPTER D. OPERATIONAL AND CLINICAL STANDARDS FOR THE PROVISION AND COORDINATION OF TREATMENT AND SERVICES

### 25 TAC §137.36

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (DSHS) adopts, on an emergency basis, an amendment to Title 25, Texas Administrative Code, §137.36, concerning Physical and Environmental Requirements For Centers. As authorized by Government Code, §2001.034, the Executive Commissioner may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if a state or federal law requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code, §2001.034, may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

#### BACKGROUND AND PURPOSE

In October 2015, DSHS updated retail food safety rules by repealing Title 25, Texas Administrative Code, §§229.161 - 229.173 (relating to Texas Food Establishments) and replacing them with Title 25, Chapter 228 (relating to Retail Food). When these rules were repealed and replaced, the rule in Title 25, Chapter 137 (relating to Birthing Centers) that incorporated the old rules by reference was not updated to refer to the new rules in Chapter 228. Consequently, DSHS is unable to enforce violations of food safety rules by birthing centers. This lack of authority to enforce food safety rule violations by birthing centers presents an imminent peril to the health, safety, and welfare of the public and, therefore, requires immediate action.

The purpose of this emergency rule amendment is to update references to the current food safety rules in the birthing center rule, thereby allowing DSHS to enforce the birthing center rule relating to food safety in order to protect the health, safety, and welfare of the public.

#### STATUTORY AUTHORITY

The emergency rule is adopted under Government Code, §2001.034, and Health and Safety Code, §244.010, and §1001.075. Government Code, §2001.034, authorizes the adoption of emergency rules without prior notice or hearing, or with an abbreviated notice and hearing, if an agency finds that

an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30 days' notice. Health and Safety Code, §244.010, requires DSHS to develop, establish, and enforce standards for birthing centers. Government Code, §531.0055, and Health and Safety Code, §1001.075, authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Health and Safety Code, Chapter 1001.

§137.36. *Physical and Environmental Requirements for Centers.*

The physical and environmental requirements for a center are as follows.

(1) (No change.)

(2) The center must have the capacity to provide clients with liquid nourishment. The center may provide commercially packaged food to clients in individual servings. If other food is provided by the center, it will be subject to the requirements of Chapter 228 of this title (relating to Retail Food) [§§229.161 - 229.173 of this title (relating to Texas Food Establishments)].

(3) - (7) (No change.)

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

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CHAPTER 139. ABORTION FACILITY  
REPORTING AND LICENSING  
SUBCHAPTER D. MINIMUM STANDARDS  
FOR LICENSED ABORTION FACILITIES

**25 TAC §139.48**

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (DSHS) adopts, on an emergency basis, an amendment to Title 25, Texas Administrative Code, §139.48, concerning Physical and Environmental Requirements. As authorized by Government Code, §2001.034, the Executive Commissioner may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if a state or federal law requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code, §2001.034, may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

In October 2015, DSHS updated retail food safety rules by repealing Title 25, Texas Administrative Code, §§229.161 - 229.171 (relating to Texas Food Establishments) and replacing them with Title 25, Chapter 228 (relating to Retail Food).

When these rules were repealed and replaced, the rule in Title 25, Chapter 139 (relating to Abortion Facility Reporting and Licensing) that incorporated the old rules by reference was not updated to refer to the new rules in Chapter 228. Consequently, DSHS is unable to enforce violations of food safety rules by abortion facilities. This lack of authority to enforce food safety rule violations by abortion facilities presents an imminent peril to the health, safety, and welfare of the public and, therefore, requires immediate action.

The purpose of this emergency rule amendment is to update references to the current food safety rules in the abortion facility rule, thereby allowing DSHS to enforce the abortion facility rule relating to food safety in order to protect the health, safety, and welfare of the public.

STATUTORY AUTHORITY

The emergency rule is adopted under Government Code, §2001.034, and Health and Safety Code, §245.010 and §1001.075. Government Code, §2001.034, authorizes the adoption of emergency rules without prior notice or hearing, or with an abbreviated notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30 days' notice. Health and Safety Code, §245.010, requires DSHS to develop, establish, and enforce standards for abortion facilities. Government Code, §531.0055, and Health and Safety Code, §1001.075, authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Health and Safety Code, Chapter 1001.

§139.48. *Physical and Environmental Requirements.*

The physical and environmental requirements for a licensed abortion facility are as follows.

(1) A facility shall:

(A) - (E) (No change.)

(F) have the capacity to provide patients with liquids.

The facility may provide commercially packaged food to patients in individual servings. If other food is provided by the facility, it shall be subject to the requirements of Chapter 228 of this title (relating to Retail Food) [§§229.161 - 229.171 of this title (relating to Texas Food Establishments)];

(G) - (I) (No change.)

(2) - (3) (No change.)

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

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Lisa Hernandez

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CHAPTER 229. FOOD AND DRUG

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (DSHS) adopts, on an emergency basis, amendments to Title 25, Texas Administrative Code, §§229.177 and §229.178, concerning Texas Food Establishments; §§229.371 - 229.373, concerning Permitting Retail Food Establishments; §§229.471, 229.473, and 229.474, concerning Inspection Fees for Retail Food Establishments; §229.661, concerning Cottage Food Production Operation; and §229.702 and §229.704, concerning Farmers' Markets. As authorized by Government Code, §2001.034, the Executive Commissioner may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if a state or federal law requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code, §2001.034, may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

#### BACKGROUND AND PURPOSE

In October 2015, DSHS updated retail food safety rules by repealing Title 25, Texas Administrative Code, §§229.161 - 229.171 and §§229.173 - 229.175 (relating to Texas Food Establishments) and replacing them with Title 25, Chapter 228 (relating to Retail Food). When these rules were repealed and replaced, rules elsewhere in Title 25, Chapter 229 (relating to Food and Drug) that incorporated the old rules by reference were not updated to refer to the new rules in Chapter 228. Consequently, DSHS is unable to enforce violations of food safety rules by food establishments, cottage food production operations, and farmers' markets. This lack of authority to enforce food safety rule violations by food establishments, cottage food production operations, and farmers' markets presents an imminent peril to the health, safety, and welfare of the public and therefore requires immediate action.

The purpose of these emergency rule amendments is to update references to the current food safety rules in the food establishment, cottage food production operations, and farmers' markets rules, thereby allowing DSHS to enforce the food establishment, cottage food production operations, and farmers' markets rules relating to food safety in order to protect the health, safety, and welfare of the public.

#### SUBCHAPTER K. TEXAS FOOD ESTABLISHMENTS

##### 25 TAC §229.177, §229.178

#### STATUTORY AUTHORITY

The emergency rules are adopted under Government Code, §2001.034, and Health and Safety Code, §§437.0056, 437.0193, 437.0202, and §1001.075. Government Code, §2001.034, authorizes the adoption of emergency rules without prior notice or hearing, or with an abbreviated notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30 days' notice. Health and Safety Code, §437.0056, requires DSHS to establish a permitting system for the regulation of food establishments and to ensure uniform requirements for retail food operations. Health and Safety Code, §437.0193, requires DSHS to adopt rules for labeling of foods produced by cottage food production operations. Health and Safety Code, §437.0202, authorizes DSHS to implement rules relating to food temperature requirements and permits at farmers' markets. Government Code, §531.0055, and Health and Safety Code, §1001.075, authorize

the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Health and Safety Code, Chapter 1001.

*§229.177. Certification of Food Managers in Areas Under the Department of State Health Services Permitting Jurisdiction.*

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

(c) Food manager certification exemptions. The following food establishments are exempt from the requirements in subsection (b) of this section:

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

(3) establishments that do not prepare or handle exposed Time/Temperature Control for Safety (TCS) food--(formerly Potentially Hazardous Food (PHF)), [potentially hazardous foods] as defined in §228.2 [§229.162(74)] of this title (relating to Definitions); or

(4) (No change.)

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

*§229.178. Accreditation of Food Handler Education or Training Programs.*

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

(c) Food handler education and training program. The department may accredit an education or training program for basic food safety. The program shall include employee knowledge, responsibilities and training as required in the Texas Food Establishment Rules (TFER).

(1) Education or training course curriculum. A food handler training or education course shall include the following basic food safety principles.

(A) Foodborne disease outbreak. Instruction on foodborne disease outbreak shall include the definition of foodborne disease outbreak, the causes and preventive measures, including employee reporting requirements as defined in Chapter 228, Subchapter B [§229.163] of this title (relating to Management and Personnel).

(B) Good hygienic practices. Instruction on good hygienic practices shall include the procedures as required in Chapter 228, Subchapter B [§229.163] of this title.

(C) Preventing contamination by employees. Instruction shall include the training as required in Chapter 228, Subchapter C [§229.164(e)(1)(D)] of this title (relating to Food), regarding the training requirements for contact with ready to eat food with their bare hands.

(D) Cross Contamination. Instruction on cross contamination shall include procedures on the prevention of cross-contamination of foods, sanitization methods and corrective actions as required in Chapter 228, Subchapter C of this title and Chapter 228, Subchapter D [§229.164 of this title and §229.165] of this title (relating to Equipment, Utensils, and Linens).

(E) Time and temperature. Instruction shall include time and temperature control of foods to limit pathogen growth or toxin production as required in Chapter 228, Subchapter C [§229.164] of this title.

(2) - (4) (No change.)

(d) - (l) (No change.)

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## SUBCHAPTER U. PERMITTING RETAIL FOOD ESTABLISHMENTS

### 25 TAC §§229.371 - 229.373

The emergency rules are adopted under Government Code, §2001.034, and Health and Safety Code, §§437.0056, §437.0193, 437.0202, and §1001.075. Government Code, §2001.034, authorizes the adoption of emergency rules without prior notice or hearing, or with an abbreviated notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30 days' notice. Health and Safety Code, §437.0056, requires DSHS to establish a permitting system for the regulation of food establishments and to ensure uniform requirements for retail food operations. Health and Safety Code, §437.0193, requires DSHS to adopt rules for labeling of foods produced by cottage food production operations. Health and Safety Code, §437.0202, authorizes DSHS to implement rules relating to food temperature requirements and permits at farmers' markets. Government Code, §531.0055, and Health and Safety Code, §1001.075, authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Health and Safety Code, Chapter 1001.

#### §229.371. Definitions.

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

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

(6) Food establishment--An operation that stores, prepares, packages, serves, or otherwise provides food for human consumption such as: a food service establishment; retail food store; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; remote catered operations; conveyance used to transport people, institution; or food bank; and that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(A) - (B) (No change.)

(C) All definitions found in §228.2 [§229.162] of this title (relating to Definitions) under the Retail Food rules [Texas Food Establishment Rules] are applicable to these sections except that, for purposes of obtaining a permit and payment of fees only, the term "food establishment" does not include:

(i) - (xi) (No change.)

(7) - (18) (No change.)

§229.372. Permitting Fees and Procedures.

(a) Permitting fees.

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

(3) A person who operates a mobile food unit shall obtain a permit from the department for each mobile food unit operated.

(A) Each mobile food unit shall be inspected and be in compliance with §228.221 of this title (relating to Mobile Food Units) [§229.169 of this title (relating to Mobile Food Establishments)], and pay a nonrefundable permit fee before a permit is issued. If a request for inspection is not received or if the mobile food unit does not meet the minimum standards contained in §228.221 of this title [§229.169 of this title (relating to Mobile Food Establishments)] within one year of paying the permit fee, a new fee shall be paid.

(B) (No change.)

(4) - (8) (No change.)

(b) - (h) (No change.)

(i) Issuance of a permit. The department may issue a permit or a renewal permit for an establishment based on compliance specified in Chapter 228 of this title (relating to Retail Food) [§§229.161 - 229.171 and §§229.173 - 229.175 of this title (relating to Texas Food Establishments)], and payment of all fees. Copies of the permit application may be obtained from the department, 1100 West 49th Street, Austin, Texas 78756-3182 or online at <http://www.dshs.state.tx.us/license.shtm>.

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

(j) Renewal of a permit.

(1) (No change.)

(2) The department may renew a permit if the applicant is in compliance with Chapter 228 of this title [§§229.161 - 229.171, and §§229.173 - 229.175 of this title], and all fees are paid.

(3) (No change.)

(k) - (1) (No change.)

#### §229.373. Minimum Standards for Permitting and Operation.

All food establishments shall be operated in accordance with the requirements specified in Chapter 228 of this title (relating to Retail Food). [§§229.161 - 229.171 and §§229.173 - 229.175 of this title (relating to Texas Food Establishments)]. Copies may be obtained from the department, 1100 West 49th Street, Austin, Texas 78756-3182, or may be downloaded from the following website: <http://www.dshs.state.tx.us/license.shtm>.

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## SUBCHAPTER Z. INSPECTION FEES FOR RETAIL FOOD ESTABLISHMENTS

**25 TAC §§229.471, 229.473, 229.474**

The emergency rules are adopted under Government Code, §2001.034, and Health and Safety Code, §§437.0056, 437.0193, 437.0202, and §1001.075. Government Code, §2001.034, authorizes the adoption of emergency rules without prior notice or hearing, or with an abbreviated notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30 days' notice. Health and Safety Code, §437.0056, requires DSHS to establish a permitting system for the regulation of food establishments and to ensure uniform requirements for retail food operations. Health and Safety Code, §437.0193, requires DSHS to adopt rules for labeling of foods produced by cottage food production operations. Health and Safety Code, §437.0202, authorizes DSHS to implement rules relating to food temperature requirements and permits at farmers' markets. Government Code, §531.0055, and Health and Safety Code, §1001.075, authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Health and Safety Code, Chapter 1001.

*§229.471. Definitions.*

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

(1) - (4) (No change.)

(5) Food establishment--

(A) - (B) (No change.)

(C) Food establishment does not include:

(i) - (v) (No change.)

(vi) a Bed and Breakfast Limited facility as defined in §228.2 [~~§229.162~~] of this title (relating to Definitions); or

(vii) (No change.)

(D) All definitions found in Chapter 228 of this title (relating to Retail Food) [~~§229.162 of this title under the Texas Food Establishment Rules~~] are applicable to these sections except that, for purposes of inspection or payment of inspection fees only, the term "food establishment" does not include:

(i) - (vi) (No change.)

(6) - (15) (No change.)

*§229.473. Minimum Standards for Permitting and Operation.*

All food establishments shall be operated in accordance with the requirements specified in Chapter 228 of this title (relating to Retail Food). [~~§§229.161 - 229.171 and §§229.173 - 229.175 of this title (relating to Texas Food Establishments).~~] Copies may be obtained from the department, 1100 West 49th Street, Austin, Texas 78756-3182, or may be downloaded from the following website: [www.dshs.state.tx.us/foodestablishments.shtm](http://www.dshs.state.tx.us/foodestablishments.shtm).

*§229.474. Refusal of Inspection Request; Administrative Penalties.*

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

(c) Administrative penalties. Administrative penalties, as provided in the Health and Safety Code, §437.018, and in §229.261 of this title (relating to Assessment of Administrative Penalties), may be assessed for violation of these sections or requirements specified in Chapter 228 of this title (relating to Retail Food). [~~§§229.161 - 229.171, and §§229.173 - 229.175 of this title (relating to Texas Food Establishments).~~]

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

Filed with the Office of the Secretary of State on August 24, 2017.

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Lisa Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 776-6972



**SUBCHAPTER EE. COTTAGE FOOD PRODUCTION OPERATION**

**25 TAC §229.661**

The emergency rules are adopted under Government Code, §2001.034, and Health and Safety Code, §§437.0056, 437.0193, 437.0202, and §1001.075. Government Code, §2001.034, authorizes the adoption of emergency rules without prior notice or hearing, or with an abbreviated notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30 days' notice. Health and Safety Code, §437.0056, requires DSHS to establish a permitting system for the regulation of food establishments and to ensure uniform requirements for retail food operations. Health and Safety Code, §437.0193, requires DSHS to adopt rules for labeling of foods produced by cottage food production operations. Health and Safety Code, §437.0202, authorizes DSHS to implement rules relating to food temperature requirements and permits at farmers' markets. Government Code, §531.0055, and Health and Safety Code, §1001.075, authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Health and Safety Code, Chapter 1001.

*§229.661. Cottage Food Production Operations.*

(a) (No change.)

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

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

(7) Food establishment--

(A) - (B) (No change.)

(C) Food establishment does not include:

(i) - (v) (No change.)

(vi) a Bed and Breakfast Limited establishment as defined in §228.2 [~~§229.162~~] of this title (relating to Definitions) concerning food establishments;

(vii) - (viii) (No change.)

(8) - (11) (No change.)

(c) - (h) (No change.)

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

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Lisa Hernandez

General Counsel

Department of State Health Services

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## SUBCHAPTER FF. FARMERS' MARKETS

### 25 TAC §229.702, §229.704

The emergency rules are adopted under Government Code, §2001.034, and Health and Safety Code, §§437.0056, 437.0193, 437.0202, and §1001.075. Government Code, §2001.034, authorizes the adoption of emergency rules without prior notice or hearing, or with an abbreviated notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30 days' notice. Health and Safety Code, §437.0056, requires DSHS to establish a permitting system for the regulation of food establishments and to ensure uniform requirements for retail food operations. Health and Safety Code, §437.0193, requires DSHS to adopt rules for labeling of foods produced by cottage food production operations. Health and Safety Code, §437.0202, authorizes DSHS to implement rules relating to food temperature requirements and permits at farmers' markets. Government Code, §531.0055, and Health and Safety Code, §1001.075, authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Health and Safety Code, Chapter 1001.

#### §229.702. Definitions.

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

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

(3) Fish--As defined in §228.2 [~~§229.162~~] of this title (relating to Definitions).

(4) - (9) (No change.)

(10) Time/Temperature Control for Safety (TCS) food--(formerly Potentially Hazardous Food) [Potentially hazardous food (time/temperature control for safety food)]--As defined in §228.2 [~~§229.162~~] of this title.

#### §229.704. Temperature Requirements.

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

(d) Cooking of raw animal foods. Raw animal foods shall be cooked to heat all parts of the food to the following temperatures:

(1) - (4) (No change.)

(5) a raw or undercooked whole-muscle, intact beef steak may be served if:

(A) the steak is labeled to indicate that it meets the definition of "whole-muscle, intact beef" as defined in §228.2 [~~§229.162(115)~~] of this title (relating to Definitions); or

(B) (No change.)

(6) (No change.)

(e) (No change.)

(f) Eggs. A farmer or egg producer that sells eggs directly to the consumer at a farm or farmers' market shall maintain the eggs at an ambient air temperature of 7 degrees Celsius (45 degrees Fahrenheit) as specified in §228.63 [~~§229.164(e)(1)(C)~~] of this title (relating to Specifications for Receiving Food).

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

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Lisa Hernandez

General Counsel

Department of State Health Services

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## CHAPTER 265. GENERAL SANITATION SUBCHAPTER B. TEXAS YOUTH CAMPS SAFETY AND HEALTH

### 25 TAC §265.13

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (DSHS), adopts, on an emergency basis, an amendment to Title 25, Texas Administrative Code, §265.13, concerning Site and Physical Facilities. As authorized by Government Code, §2001.034, the Executive Commissioner may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if a state or federal law requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code, §2001.034, may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

#### BACKGROUND AND PURPOSE

In October 2015, DSHS updated retail food safety rules by repealing Title 25, Texas Administrative Code, §§229.161 *et seq.*, (relating to Texas Food Establishments) and replacing them with Title 25, Chapter 228 (relating to Retail Food). When these rules were repealed and replaced, the rule in Title 25, Chapter 265, Subchapter B (relating to Texas Youth Camps Safety and Health) that incorporated the old rules by reference was not updated to refer to the new rules in Chapter 228. Consequently, DSHS is unable to enforce violations of food safety rules by youth camps. This lack of authority to enforce food safety rule violations by youth camps presents an imminent peril to the health, safety, and welfare of the public and, therefore, requires immediate action.

The purpose of this emergency rule amendment is to update references to the current food safety rules in the youth camp rule, thereby allowing DSHS to enforce the youth camp rule relating



to food safety in order to protect the health, safety, and welfare of the public.

#### STATUTORY AUTHORITY

The emergency rule is adopted under Government Code, §2001.034, and Health and Safety Code, §141.009 and §1001.075. Government Code, §2001.034, authorizes the adoption of emergency rules without prior notice or hearing, or with an abbreviated notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30 days' notice. Health and Safety Code, §141.009, requires the Health and Human Services Commission to establish health and safety standards for youth camps. Government Code, §531.0055, and Health and Safety Code, §1001.075, authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Health and Safety Code, Chapter 1001.

#### §265.13. *Site and Physical Facilities.*

(a) - (s) (No change.)

(t) Permanent food preparation, storage and service areas. Permanent food preparation, storage and service areas shall be maintained in compliance with Chapter 228 of this title (relating to Retail Food) [229, Subchapter K, §§229.161 *et seq.*, of this title (relating to Texas Food Establishments); as amended]. Items inspected may include, but are not limited to:

(1) - (26) (No change.)

(u) (No change.)

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

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Lisa Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 776-6972



## CHAPTER 295. OCCUPATIONAL HEALTH SUBCHAPTER G. SANITATION AT TEMPORARY PLACES OF EMPLOYMENT

### 25 TAC §295.169

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (DSHS), adopts, on an emergency basis, an amendment to Title 25, Texas Administrative Code, §295.169, concerning Standards for Food Service. As authorized by Government Code, §2001.034, the Executive Commissioner may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if a state or federal law requires adoption on fewer than 30 days' notice. Emergency rules adopted under

Government Code, §2001.034, may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

#### BACKGROUND AND PURPOSE

In October 2015, DSHS updated retail food safety rules by repealing Title 25, Texas Administrative Code, §§229.161 - 229.171 (relating to Texas Food Establishments) and replacing them with Title 25, Chapter 228 (relating to Retail Food). When these rules were repealed and replaced, the rule in Title 25, Chapter 295, Subchapter G (relating to Sanitation at Temporary Places of Employment) that incorporated the old rules by reference was not updated to refer to the new rules in Chapter 228. Consequently, DSHS is unable to enforce violations of food safety rules by temporary places of employment. This lack of authority to enforce food safety rule violations by temporary places of employment presents an imminent peril to the health, safety, and welfare of the public and, therefore, requires immediate action.

The purpose of this emergency rule amendment is to update references to the current food safety rules in the temporary places of employment rule, thereby allowing DSHS to enforce the temporary places of employment rule relating to food safety in order to protect the health, safety, and welfare of the public.

#### STATUTORY AUTHORITY

The emergency rule is adopted under Government Code, §2001.034, and Health and Safety Code, §341.002 and §1001.075. Government Code, §2001.034, authorizes the adoption of emergency rules without prior notice or hearing, or with an abbreviated notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30 days' notice. Health and Safety Code, §341.002, authorizes the Health and Human Services Commission to establish standards and procedures for the management and control of sanitation and for health protection measures. Government Code, §531.0055, and Health and Safety Code, §1001.075, authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Health and Safety Code, Chapter 1001.

#### §295.169. *Standards for Food Service.*

The preparation, storage, and dispensing of food at any temporary place of employment shall be accomplished according to Chapter 228 of this title (relating to Retail Food) [§§229.161-229.171 of this title (relating to Food Service Sanitation)] as administered by the health authority having local jurisdiction.

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

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TRD-201703325

Lisa Hernandez

General Counsel

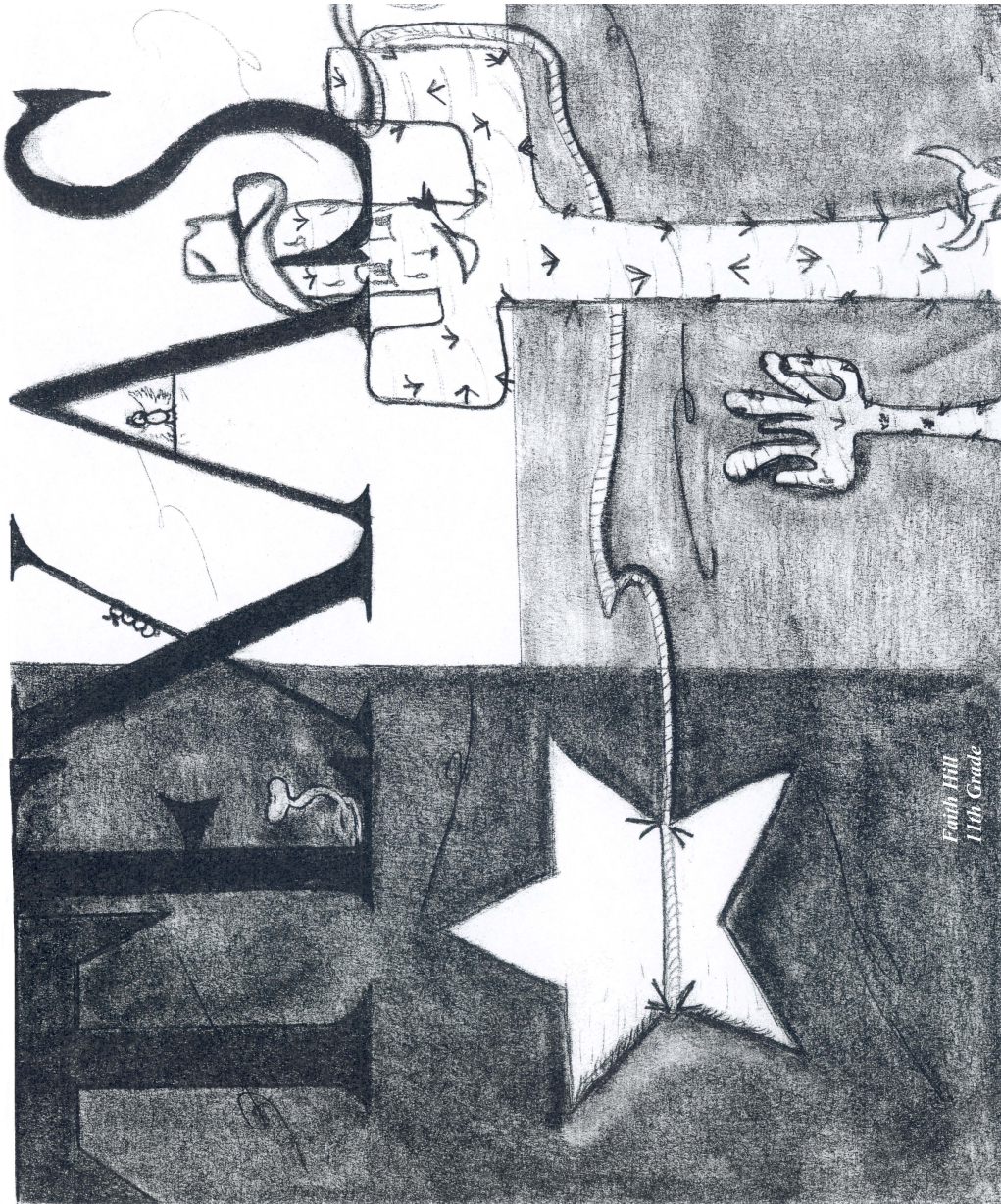
Department of State Health Services

Effective date: August 24, 2017

Expiration date: December 21, 2017

For further information, please call: (512) 776-6972





Faith Hill  
11th Grade

# 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 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 17. MARKETING AND PROMOTION

##### SUBCHAPTER A. TEXAS COMMODITY REFERENDUM LAW

The Texas Department of Agriculture (Department) proposes the repeal of Title 4, Part 1, Chapter 17, Subchapter A, Texas Commodity Referendum Law, Division 1, General Rules, §§17.1 - 17.10, and §17.12; Division 2, Texas Beef Checkoff Program, §§17.20 - 17.25; and Division 3, Texas Grain Producer Indemnity Fund Program, §§17.26 - 17.29. Subchapter A of Chapter 17 is proposed for repeal and shall be moved to Title 4, Part 1, Chapter 23, related to new proposed Texas Commodity Law (Chapter 23), which is filed and proposed simultaneously at the time of this submission.

Jessica Escobar, Assistant General Counsel, has determined that for the first five-year period after the proposed repeals take effect, there will be no fiscal impact for state government. There is no fiscal impact for local governments.

Ms. Escobar has also determined that for each year of the first five years the proposed repeals are in effect there will be no adverse fiscal impact on individuals, or small or micro-businesses as a result of the proposed repeals.

Written comments on the proposal may be submitted to Jessica Escobar, Assistant General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711 or to [Jessica.Escobar@Texasagriculture.gov](mailto:Jessica.Escobar@Texasagriculture.gov). Written comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

##### DIVISION 1. GENERAL RULES

###### 4 TAC §§17.1 - 17.10, 17.12

The proposal is made pursuant to Chapter 41 of the Agriculture Code, which provides the Department with the authority to adopt rules to administer its duties under the Code.

The code affected by the proposal is Texas Agriculture Code, Chapter 41.

- §17.1. *Certification of Commodity Organizations.*
- §17.2. *Notice of Referendum and Election.*
- §17.3. *Conduct of Elections; Ballots; Canvass; Reporting.*
- §17.4. *Certification of the Board.*
- §17.5. *Assessment of Funds.*

§17.6. *Expending Funds and Budget Approval.*

§17.7. *Geographic Representation on Board.*

§17.8. *Discontinuance of Assessment.*

§17.9. *Penalty and Remedies.*

§17.10. *Restrictions on Use of Producer Assessments.*

§17.12. *Disposition of Funds Held by the Southern Rolling Plains Cotton Producers Board.*

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

Filed with the Office of the Secretary of State on August 28, 2017.

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Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: October 8, 2017

For further information, please call: (512) 463-4075



##### DIVISION 2. TEXAS BEEF CHECKOFF PROGRAM

###### 4 TAC §§17.20 - 17.25

The proposal is made pursuant to Chapter 41 of the Agriculture Code, which provides the Department with the authority to adopt rules to administer its duties under the Code.

The code affected by the proposal is Texas Agriculture Code, Chapter 41.

§17.20. *Scope and Applicability.*

§17.21. *Definitions.*

§17.22. *Voter Eligibility.*

§17.23. *Conduct of Referendum; Ballots; Canvass.*

§17.24. *Council Duties; Reporting Requirements.*

§17.25. *Collection of Assessment; Refunds.*

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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Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

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For further information, please call: (512) 463-4075



## DIVISION 3. TEXAS GRAIN PRODUCER INDEMNITY FUND PROGRAM

### 4 TAC §§17.26 - 17.29

The proposal is made pursuant to Chapter 41 of the Agriculture Code, which provides the Department with the authority to adopt rules to administer its duties under the Code.

The code affected by the proposal is Texas Agriculture Code, Chapter 41.

§17.26. *Scope and Applicability.*

§17.27. *Definitions.*

§17.28. *Voter Eligibility.*

§17.29. *Conduct of Referendum; Ballots; Canvass and Watchers; Re-counts.*

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 August 28, 2017.

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Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

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For further information, please call: (512) 463-4075



## PART 6. TEXAS GRAIN PRODUCER INDEMNITY BOARD

### CHAPTER 90. TEXAS GRAIN PRODUCER INDEMNITY FUND PROGRAM RULES

The Texas Department of Agriculture (Department), on behalf of the Texas Grain Producer Indemnity Board (Board), proposes the repeal of Title 4, Part 6, Chapter 90, Subchapter A, General Provisions, §90.1; Subchapter B, Board Members, §§90.20 - 90.24; Subchapter C, Producer Assessments, §§90.30 - 90.38 Subchapter D, Claims, §§90.40 - 90.46; Subchapter E, Appeals, Remedies, §90.50 and §90.51. These sections of Chapter 90 are proposed for repeal and shall be moved to Title 4, Part 1, Chapter 23, related to Texas Commodity Law (Chapter 23), which is filed and proposed simultaneously at the time of this submission.

The Department makes this administrative change on behalf of the Board due to the fact that it was designated "inactive" during the 85th Regular Legislative Session.

Jessica Escobar, Assistant General Counsel, has determined that for the first five-year period the proposed repeals are in effect, there will be no fiscal impact for state government. There is no fiscal impact for local governments.

Ms. Escobar has also determined that for each year of the first five years the proposed repeals are in effect will be no adverse fiscal impact on individuals, small or micro businesses as a result of the proposed repeals.

Written comments on the proposal may be submitted to Jessica Escobar, Assistant General Counsel, Texas Department of

Agriculture, P.O. Box 12847, Austin, Texas 78711 or to *Jessica.Escobar@Texasagriculture.gov*. Written comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

### SUBCHAPTER A. GENERAL PROVISIONS

#### 4 TAC §90.1

The repeals are proposed pursuant to §41.211 of the Agriculture Code, which provides the Board with the authority to adopt rules to administer its duties under the Code.

The code affected by the proposal is Texas Agriculture Code, Chapter 41.

§90.1. *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 August 28, 2017.

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Jessica Escobar

Assistant General Counsel

Texas Grain Producer Indemnity Board

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For further information, please call: (512) 463-4075



### SUBCHAPTER B. BOARD MEMBERS

#### 4 TAC §§90.20 - 90.24

The repeals are proposed pursuant to §41.211 of the Agriculture Code, which provides the Board with the authority to adopt rules to administer its duties under the Code.

The code affected by the proposal is Texas Agriculture Code, Chapter 41.

§90.20 *Meetings.*

§90.21. *Election of Officers.*

§90.22. *Management of Budget.*

§90.23. *Selection of Board Agents.*

§90.24. *Reporting Requirements.*

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

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Jessica Escobar

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For further information, please call: (512) 463-4075



### SUBCHAPTER C. PRODUCER ASSESSMENTS

#### 4 TAC §§90.30 - 90.38

The repeals are proposed pursuant to §41.211 of the Agriculture Code, which provides the Board with the authority to adopt rules to administer its duties under the Code.

The code affected by the proposal is Texas Agriculture Code, Chapter 41.

§90.30. *Maximum Assessment Rate.*

§90.31. *Assessment Calculation.*

§90.32. *Notice to Grain Buyers.*

§90.33. *Grain Buyer Collection.*

§90.34. *Remittance of Assessment.*

§90.35. *Grain Producer Reporting.*

§90.36. *Refunds.*

§90.37. *Discontinuance of Assessment.*

§90.38. *Restrictions on Use of Producer Assessments.*

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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Jessica Escobar

Assistant General Counsel

Texas Grain Producer Indemnity Board

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For further information, please call: (512) 463-4075



## SUBCHAPTER D. CLAIMS

### 4 TAC §§90.40 - 90.46

The repeals are proposed pursuant to §41.211 of the Agriculture Code, which provides the Board with the authority to adopt rules to administer its duties under the Code.

The code affected by the proposal is Texas Agriculture Code, Chapter 41.

§90.40. *Initiation of Claim.*

§90.41. *Claim Review and Determination.*

§90.42. *Denial of Claim.*

§90.43. *Award.*

§90.44. *Subrogation.*

§90.45. *Borrowing Funds.*

§90.46. *Use of Reinsurance.*

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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Jessica Escobar

Assistant General Counsel

Texas Grain Producer Indemnity Board

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For further information, please call: (512) 463-4075



## SUBCHAPTER E. APPEALS, REMEDIES

### 4 TAC §90.50, §90.51

The repeals are proposed pursuant to §41.211 of the Agriculture Code, which provides the Board with the authority to adopt rules to administer its duties under the Code.

The code affected by the proposal is Texas Agriculture Code, Chapter 41.

§90.50. *Administrative Review.*

§90.51. *Penalty and Remedies.*

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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Jessica Escobar

Assistant General Counsel

Texas Grain Producer Indemnity Board

Earliest possible date of adoption: October 8, 2017

For further information, please call: (512) 463-4075



## TITLE 22. EXAMINING BOARDS

### PART 14. TEXAS OPTOMETRY BOARD

#### CHAPTER 273. GENERAL RULES

##### 22 TAC §273.4

The Texas Optometry Board proposes amendments to §273.4 to set fees for license renewal. The amendments to the fees will fund the agency's contribution to the costs of the Prescription Monitoring Program as set out in House Bill 2561, Regular Session, 85th Legislature. Fee changes will also fund the agency's national databank query at license renewal. The query is required by Senate Bill 314, Regular Session, 85th Legislature. The rule also amends language referring to fingerprint requirements in this title.

Chris Kloeris, executive director of the Texas Optometry Board, estimates that for the first five-year period the amendments are in effect, the Optometry Board will collect an additional \$26,741.93 each year. Fifteen percent of the additional amount collected is allocated by statute to the University of Houston. Of the total amount, \$14,161.85 each year will be transferred to the Texas State Board of Pharmacy to operate the Prescription Monitoring Program. The amendment of license renewal fees is estimated to provide \$9,092.00 to pay for a query from a national databank on each renewing licensee. There will be no fiscal implications for local government as a result of enforcing or administering the amendments.

Chris Kloeris also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated is that the Prescription Monitoring Program, which detects potentially harmful prescribing or dispensing patterns or practices that may suggest drug diversion or drug abuse, will be adequately funded. The query of a national databank benefits the public by identifying licensees disciplined in other states.

It is anticipated that there will be economic costs of \$7.65 per year for active licensed Optometric Glaucoma Specialists for each of the first five years the amendments are in effect. All



other licensees will see a \$2.36 increase in the annual license renewal fee.

#### ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

The agency licenses approximately 4,000 optometrists and therapeutic optometrists. A significant majority of licensees own or work in one or more of the 1,000 to 3,000 optometric practices which meet the definition of a small business. Some of these practices meet the definition of a micro business. The agency does not license these practices.

#### ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed rule does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action, and therefore does not constitute a taking under Texas Government Code §2007.043.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

The amendment is proposed under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.152, 351.154, 351.304, and 351.308; and House Bill 2561 and Senate Bill 314, Regular Session, 85th Legislature. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets §§351.152, 351.154, 351.304, and 351.308 as authorizing the agency to set license renewal and late renewal fees and requiring a deposit to the University of Houston of a percentage of the renewal fee. House Bill 2561 amends the Prescription Monitoring Program and authorizes the agency to increase renewal fees to fund a transfer to the Texas State Board of Pharmacy. Senate Bill 314 requires the agency to query a national databank at cost for each license renewal.

#### §273.4. Fees (Not Refundable).

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

(g) License Renewal.

(1) Optometrist and Therapeutic Optometrist: \$210.36 [~~\$208.00~~] plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total fees: \$211.36 [~~\$209.00~~]. The license renewal fee includes \$10.00 to fund a program to aid impaired optometrists and optometry students as authorized by statute.

(2) Optometric Glaucoma Specialist: \$223.50 [~~\$208.00~~] plus \$1.00 fee required by House Bill 2985, 78th Legislature [~~and \$7.85 fee to fund the Prescription Monitoring Program authorized by Senate Bill 195, 84th Legislature~~]. The inactive license renewal fee does not include the Prescription Monitoring Program fee. Total fees: \$224.50 [~~\$216.85~~] active renewal; \$211.36 [~~\$209.00~~] inactive renewal. The license renewal fee includes \$10.00 to fund a program to aid impaired optometrists and optometry students as authorized by statute.

(h) License fee for late renewal, one to 90 days late.

(1) Optometrist and Therapeutic Optometrist: \$315.54 [~~\$312.00~~] plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total late license fees: \$316.54 [~~\$313.00~~].

(2) Optometric Glaucoma Specialist: \$335.25 [~~\$312.00~~] plus \$1.00 fee required by House Bill 2985, 78th Legislature [~~and \$7.85 fee to fund the Prescription Monitoring Program authorized by Senate Bill 195, 84th Legislature~~]. The inactive license renewal fee does not include the Prescription Monitoring Program fee. Total fees: \$336.25 [~~\$320.85~~] active renewal; \$316.54 [~~\$313.00~~] inactive renewal.

(i) License fee for late renewal, 90 days to one year late.

(1) Optometrist and Therapeutic Optometrist: \$420.72 [~~\$416.00~~] plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total late license fees: \$421.72 [~~\$417.00~~].

(2) Optometric Glaucoma Specialist: \$447.00 [~~\$416.00~~] plus \$1.00 fee required by House Bill 2985, 78th Legislature [~~and \$7.85 fee to fund the Prescription Monitoring Program authorized by Senate Bill 195, 84th Legislature~~]. The inactive license renewal fee does not include the Prescription Monitoring Program fee. Total fees: \$448.00 [~~\$424.85~~] active renewal; \$421.72 [~~\$417.00~~] inactive renewal.

(j) Late fees (for all renewals with delayed continuing education) \$210.36 [~~\$208.00~~].

(k) - (n) (No change.)

(o) Retired License.

(1) Optometrist and Therapeutic Optometrist: \$210.36 [~~\$208.00~~] plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$211.36 [~~\$209.00~~].

(2) Optometric Glaucoma Specialist: \$223.50 [~~\$208.00~~] plus \$1.00 fee required by House Bill 2985, 78th Legislature [~~and \$7.85 fee to fund the Prescription Monitoring Program authorized by Senate Bill 195, 84th Legislature~~]. Total fee: \$224.50 [~~\$216.85~~].

(p) - (q) (No change.)

(r) Section 273.8 of this title defines when the fee required for FBI criminal history in the amount charged by the Texas Department of Public Safety is required.

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 August 22, 2017.

TRD-201703270

Chris Kloeris

Executive Director

Texas Optometry Board

Earliest possible date of adoption: October 8, 2017

For further information, please call: (512) 305-8500



## CHAPTER 277. PRACTICE AND PROCEDURE

### 22 TAC §277.1, §277.11

The Texas Optometry Board proposes amendments to §277.1 and new §277.11 to comply with Senate Bill 314, Regular Session, 85th Legislature, including implementing new Texas Optometry Act §351.5014 of Senate Bill 314. The amendments state that anonymous complaints cannot be accepted and that the agency will attempt to preserve the confidentiality of the complainant in the investigative process, with some exceptions. New

Rule §277.11 authorizes the agency to require a licensee or applicant to submit to a Mental or Physical Examination if evidence of an incapacity prevents or could prevent the applicant or license holder from practicing with reasonable skill, competence, and safety to the public

Chris Kloeris, executive director of the Texas Optometry Board, estimates that for the first five-year period the proposal is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Chris Kloeris also has determined that for each of the first five years the proposal is in effect, the public benefit anticipated is that only valid complaints will be investigated by the agency and that the agency will be able to investigate, and if needed, restrict the practice of applicants or licensees who are prevented or could be prevented from competently practicing because of an incapacity

It is anticipated that there will be no economic costs for complainants or respondents, the only groups affected by the amendments to Rule §277.1. For new Rule §277.11, the agency is unable to predict economic costs for applicants or licensees who are required to submit to a Mental or Physical Examination and invites comments on possible economic costs. Only those applicants or licensees meeting the probable cause set out in this rule will be required to submit to an examination, and that examination could take many forms with costs possibly covered by other payors.

#### ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

The agency licenses approximately 4,000 optometrists and therapeutic optometrists. A significant majority of licensees own or work in one or more of the 1,000 to 3,000 optometric practices which meet the definition of a small business. Some of these practices meet the definition of a micro business. The agency does not license these practices.

#### ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed rule does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action, and therefore does not constitute a taking under Texas Government Code §2007.043.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

The amendment and new rule are proposed under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.2045, and 351.205; and Senate Bill 314, Regular Session, 85th Legislature, including new §351.5014 in Senate Bill 314. No other sections are affected by the amendments and new rule.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets §351.2045, and §351.205 as setting out the confidential status of a complaint and requiring the agency to adopt rules

concerning the investigation of a complaint. Senate Bill 314 adds requirements regarding anonymous complaints and notice requirements for complaints from insurers, agents, administrators and drug companies. Senate Bill 314 in §351.5014 creates a process for the agency to order a physical or mental examination.

#### §277.1. Complaint Procedures.

(a) Filing complaints. Complaints may be filed in writing with the agency, either in person at the board's office, or by mail. The board shall adopt a form as its official complaint form which shall be maintained at the board's office for use at the request of any complainant. Complaints are privileged and confidential. At a minimum, all complaints shall contain information necessary for the proper processing of the complaint by the board, including, but not limited to:

(1) complainant's name, address, and phone number. The board cannot accept an anonymous complaint. The board shall protect the identity of a complainant in the investigative process to the extent possible. If the complainant is an insurance agent, insurer, pharmaceutical company, or third-party administrator, the board will notify the respondent within 15 days of the name and address of the complainant;

(2) name, address, and phone number of the optometrist, therapeutic optometrist, or other person, firm, or corporation, if known;

(3) date, time, and place of occurrence of alleged violation;

(4) complete description of incident giving rise to the complaint; and

(5) express authorization to release patient records to the Board where applicable.

(b) - (h) (No change.)

#### §277.11. Submission to Mental or Physical Examination.

(a) If the board has probable cause to believe that a licensee/applicant has developed an incapacity that prevents or could prevent the applicant or license holder from practicing optometry or therapeutic optometry with reasonable skill, competence, and safety to the public (an incapacity), the board shall require the licensee/applicant to submit to a mental and/or physical examination by a physician or other healthcare professional designated by the board. 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/applicant has developed an incapacity;

(2) a sworn statement from a representative of the Peer Assistance Program, stating that the representative is willing to testify before the board that a certain licensee/applicant has developed an incapacity;

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

(4) evidence that a licensee/applicant has engaged in the intemperate use of drugs or alcohol at a time and under circumstances that would lead a reasonable person to believe that the licensee/applicant has developed an incapacity;

(5) evidence of repeated arrests of a licensee/applicant for intoxication or drug use;

(6) evidence of recurring temporary commitments to a mental institution of a licensee/applicant;

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

(8) actions or statements by a licensee/applicant at a hearing conducted by the board that gives the board reason to believe that the licensee has developed an incapacity.

(b) Upon presentation to the Executive Director of probable cause, the board authorizes the Executive Director to write the licensee/applicant requesting that the licensee/applicant submit to a physical or mental examination within 30 days of the receipt of the letter from the Executive Director. The letter shall state the reasons for the request for the mental or physical examination and the physician or other healthcare professional designated by the Executive Director to conduct such examinations. The applicant/licensee shall authorize the release of the results of the examination to the board and the results shall be submitted to the board within 15 days of the date of the examination. The results of any board-ordered mental or physical examination are confidential.

(c) If the licensee/applicant to whom a letter requiring a mental or physical examination is sent refuses to submit to the examination, the board, through its Executive Director, shall issue an order requiring the licensee/applicant to show cause why the licensee/applicant should not be required to submit to the examination and shall schedule a hearing on the order not later than 30 days after the date on which the notice of the hearing is provided to the licensee. The licensee/applicant shall be notified by either personal service or certified mail with return receipt requested.

(d) At the hearing provided in for in subsection (c) of this section, three members of the board appointed by the president of the board shall determine whether the licensee/applicant shall submit to an evaluation or that the matter shall be closed with no examination required.

(1) At the hearing, the applicant/licensee has the burden of proof once probable cause has been established by the board to rebut the probable cause. The applicant/licensee and the licensee/applicant's attorney, if any, are entitled to present testimony and other evidence to show why probable cause has not been established requiring the applicant/licensee to submit to the examination. An applicant/licensee is entitled to cross-examine an expert who offers testimony at the hearing.

(2) If, after consideration of the evidence presented at the hearing, the panel determines that the licensee/applicant shall submit to an examination, the panel shall authorize the Executive Director to issue an order requiring the examination within 60 days after the date of the entry of the order requiring examination. The applicant/licensee shall authorize the release of the results of the examination to the board, and the results shall be submitted to the board within 15 days of the date of the examination.

(3) If the panel determines that no such examination is necessary, the panel will withdraw the request for examination.

(e) The provisions of this rule shall not be construed so as to prohibit other appropriate disciplinary action under the Act, civil or criminal action and remedy and enforcement under other 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 August 22, 2017.  
TRD-201703271

Chris Kloeris  
Executive Director  
Texas Optometry Board  
Earliest possible date of adoption: October 8, 2017  
For further information, please call: (512) 305-8500

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**TITLE 25. HEALTH SERVICES**

**PART 1. DEPARTMENT OF STATE  
HEALTH SERVICES**

**CHAPTER 37. MATERNAL AND INFANT  
HEALTH SERVICES**

**SUBCHAPTER G. SPINAL SCREENING  
PROGRAM**

**25 TAC §§37.142 - 37.145**

The Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes amendments to §§37.142 - 37.145, concerning the Spinal Screening Program (program).

**BACKGROUND AND PURPOSE**

DSHS administers the state program designed to identify abnormal spinal curvature in certain school-age children attending public and private schools, in accordance with Health and Safety Code, Chapter 37. The rules implement and outline the appropriate standards for spinal screening in school-age children. The program is responsible for the training and certification of individuals who conduct spinal screenings in the schools. The schools are responsible for ensuring that enrolled children comply with the screening requirements of this subchapter.

The proposed amendments will update the rules in accordance with House Bill (H.B.) 1076, 85th Legislature, Regular Session, 2017. H.B. 1076 requires rules to be adopted with consideration of the most recent nationally accepted and peer-reviewed scientific research when determining the appropriate ages for conducting spinal screening. H.B. 1076 is effective on September 1, 2017, and will be implemented during the 2018-2019 school year.

**SECTION-BY-SECTION SUMMARY**

The proposed amendments to §37.142 include adding and removing definitions for clarity and consistency. A definition for the term Chief Administrator is added and will be defined as the principal of each school, as defined in Title 19, Education, of the Texas Administrative Code. This will clarify responsibility for ensuring compliance with screening requirements in accordance with Health and Safety Code, Chapter 37, §37.002. The definitions for American Academy of Orthopaedic Surgeons (AAOS), Forward-bend test, and Scoliosis Inclinator are proposed for removal, as they are no longer referenced in this subchapter.

The proposed amendment to §37.143(a) removes the language that specifies spinal screening is required in grades six and nine. H.B. 1076 allows for consideration of the most recent nationally accepted and peer-reviewed scientific research when determining the appropriate ages for conducting spinal screening. The current rule references a position statement from 2007 and has an invalid hyperlink. DSHS proposes removing the hyperlink ref-



erence and paragraphs (1) - (5) from the rule and create a policy for the most current recommended spinal screening information on the DSHS website. In 2015, the Scoliosis Research Society (SRS), AAOS, Pediatric Orthopedic Society of North America (POSNA) and American Academy of Pediatrics (AAP) released a joint position statement and believe that screening examinations for spine deformity should be part of the medical home preventative services visit for females at age 10 and 12 years, and males once at age 13 or 14 years. Placing nationally accepted practices in policy will allow DSHS flexibility to comply with current national recommendations and guidelines for spinal screening, while still maintaining oversight over the training and certification requirements of screeners.

The proposed amendment to §37.144 adds new subsection (a) related to the process to notify parents of the spinal screening requirement, process, procedure, and method to decline, in accordance with H.B. 1076. Current subsections (a) - (e) will be renumbered to subsections (b) - (f).

The proposed amendment to renumbered subsection (c)(1), removes the language related to the requirement of spinal screening in grades six and nine and was replaced with "who meet the criteria outlined in department policy." Language in renumbered §37.144(c)(1) allows for the screening requirement to be met if a parent, managing conservator, or guardian substitutes a professional examination as defined in §37.142, relating to Definitions.

Current language in §37.144(b)(2), renumbered to subsection (c)(2), is recommended for deletion to simplify the rule.

The proposed amendment to renumbered §37.144(c)(3) removes the language related to grades ten, eleven, or twelve, and allows any child the opportunity for spinal screening if the student does not have a record of having been screened previously.

The proposed amendment to §37.145(b)(3) will allow spinal screening records to transfer between schools without written consent. Texas Health and Safety Code, Chapter 37, related to Abnormal Spinal Curvature in Children, does not require consent to perform the screen or to report results. Allowing schools to transfer spinal screening records between schools, will streamline student transfers and align the process for transfer of records with Texas Health and Safety Code, §36.006(c), related to Special Senses and Communication Disorders; the Texas Education Code, §25.002, related to Transfer, Admission and Attendance; and Texas Education Code, §38.002(b), which do not require written consent for the transfer of screening records between schools.

The proposed amendment to §37.145(c) is necessary to update the mailing address for the Vision, Hearing, and Spinal Screening Program at DSHS.

#### FISCAL NOTE

Mr. Felipe Rocha, Director, Public Health Screening and Services Coordination Section, has determined that for each year of the first five years the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Rocha has also determined there will be no adverse economic impact on micro-businesses or small businesses required to comply with the section as proposed. This was determined by

interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices.

#### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no fiscal impact on local employment.

#### PUBLIC BENEFIT

Mr. Rocha has also determined the public will benefit from adoption of the sections. The anticipated public benefit is assurance that required spinal screening for school-age children would be performed according to the most recent nationally accepted recommendations, as mandated by law.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted in writing to Elijah Brown, Vision, Hearing, and Spinal Screening, Public Health Screening and Services Coordination Section, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347; by fax to (512) 776-7414; or by email to [vhssprogram@dshs.texas.gov](mailto:vhssprogram@dshs.texas.gov) within 30 days of publication of this proposal in the *Texas Register*. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 25R049" in the subject line.

#### STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, Chapter 37, which mandates adoption of rules necessary to carry out the program; and by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation of and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendments affect Government Code, Chapter 531; and Health and Safety Code, Chapters 37 and 1001.

#### §37.142. Definitions.

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

(1) (No change.)

~~[(2) American Academy of Orthopaedic Surgeons (AAOS)—A nationally-recognized professional body which develops musculoskeletal health guidelines as part of the organization's research and quality goals.]~~

(2) ~~[(3)] Certification—The process by which the Department of State Health Services (department) trains individuals to conduct spinal screening as well as to then provide training screening procedures.~~

(3) Chief Administrator--The principal (or designee) of a school as defined by the Texas Education Agency, Title 19, Part 2, Chapter 149, Subchapter BB.

(4) (No change.)

~~[(5) Forward-bend test--A screening procedure to determine whether a child may have an abnormal spinal curvature.]~~

(5) ~~[(6)]~~ Licensed professional--An individual who is appropriately licensed under state law, including physicians, chiropractors, physical therapists, and registered nurses, and has completed a course of study in physical assessment.

(6) ~~[(7)]~~ Professional examination--A diagnostic evaluation performed by an appropriately licensed professional whose expertise addresses the diagnostic needs of the individual identified as having a possible abnormal spinal curvature. A professional examination is one that is performed according to the requirements of this subchapter and of Texas Health and Safety Code, Chapter 37.

(7) ~~[(8)]~~ School--An educational institution, public or private, that admits children who are five through twenty-one years of age, which includes an individual school campus.

~~[(9) Scoliosis inclinometer--An instrument for measuring the clinical deformity of patients with scoliosis. The brand name "Scoliometer" is sometimes used interchangeably.]~~

(8) ~~[(10)]~~ Screening--A test or battery of tests for rapidly determining the need for a professional examination.

#### §37.143. Spinal Screening Procedures.

(a) Spinal screening is required, for all children ~~[in grades six and nine]~~ who attend public and private schools, to detect abnormal spinal curvature. Spinal screening, conducted under this subchapter by a person who is not a licensed professional, as the term is defined in this subchapter, must be conducted following the most recent, nationally accepted and peer-reviewed standards for spinal screening. The spinal screening requirements are established in policy located on the department's website at <http://www.dshs.texas.gov/spinal> [national standards for screening set by the AAOS currently found at <http://www.aaos.org/news/bulletin/nov07/clinical5.asp>, as they apply to allowable method of screening and age of screening, with the following exceptions].

~~[(1) The use of a scoliosis inclinometer is optional for spinal screening.]~~

~~[(2) If a scoliosis inclinometer is used for spinal screening, a rescreen should be conducted for reading results of 5 to 7 degrees. The rescreen should be conducted within two weeks of the initial screening. A follow-up rescreen should be conducted in six months to one year to determine if the abnormal curvature is increasing.]~~

~~[(3) When using a scoliosis inclinometer, results of 7 degrees or more shall be documented as "abnormal findings."]~~

~~[(4) If a scoliosis inclinometer is not used for spinal screening, a rescreen should be conducted for abnormal findings. The rescreen should be conducted within two weeks of the initial screening. Abnormal findings detected during the rescreen shall be documented in the child's spinal screening record. The school's chief administrator shall inform the child's parent, managing conservator, or guardian, as specified in §37.144(a) of this title (relating to School Requirements; Department Activities).]~~

~~[(5) In accordance with Health and Safety Code, Chapter 37 requirements, children will be screened in grades six and nine instead of the AAOS guidelines.]~~

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

#### §37.144. School Requirements; Department Activities.

(a) The chief administrator of each school is responsible for notifying a parent, managing conservator, or guardian of the requirement to conduct spinal screening, the purpose of and the reasons for spinal screening and potential risk to the child if declined, the method used to perform the screening based on §37.143 of this title (related to Spinal Screening Procedures), and the method to decline spinal screening based on subsection (e) of this section. For purposes of this section, the notification may be in electronic format.

(b) ~~[(a)]~~ The chief administrator of each school is responsible for the school maintaining a copy of the screening results and the mailing of a copy of the report to the parent, managing conservator, or guardian of the individual screened if an abnormal spinal curvature is suspected, based on §37.143(a) of this title (relating to Spinal Screening Procedures).

(c) ~~[(b)]~~ The chief administrator of each school shall ensure that each individual admitted to the school complies with the screening requirements of this subchapter, according to the following schedule:

(1) All children enrolled in a public or private school, who meet the criteria outlined in department policy, [in grades six and nine] shall be screened for abnormal spinal curvature before the end of the school year. The screening requirements may also be met by a professional examination as defined in §37.142 of this title (relating to Definitions).

~~[(2) The screening requirements for children entering grades six and nine may be met if the child has been screened for abnormal spinal curvature during the previous year.]~~

(2) ~~[(3)]~~ If a child is enrolled within 60 days of the date a school closes for the summer, the child's spinal screening must be conducted within 120 days of the beginning of the following school year.

(3) ~~[(4)]~~ Schools may offer a student ~~[enrolling in grades ten, eleven, or twelve]~~ the opportunity for spinal screening if the student has no record of having been screened previously.

(d) ~~[(e)]~~ A child's parent, managing conservator, or legal guardian, or the individual under the scenarios described in Texas Family Code, §32.003, may execute an affidavit stating that a person, other than the individual secured by the school to conduct screenings at the school, shall conduct the screening as soon as is feasible. The school may admit the child on a provisional basis for up to 60 days, or may deny admission until the screening record(s) are provided to the school. The 60-day time period is from November 30 to January 30 of each school year.

(e) ~~[(d)]~~ A school shall not require a child to be screened if the child's parent, managing conservator, or legal guardian, or the individual under the scenarios described in Texas Family Code, §32.003, submits to the school, on or before the date spinal screening is scheduled, an affidavit in lieu of the screening record(s) stating that the spinal screening conflicts with the tenets and practices of a church or religious denomination of which the affiant is an adherent or member.

(f) ~~[(e)]~~ Only individuals who have completed high school may serve as volunteer assistants during spinal screenings. It is the responsibility of the certified screener to determine how any volunteer assistant(s) will be used during the screening process, consistent with all state and federal confidentiality requirements.

#### §37.145. Recordkeeping and Reporting.

(a) (No change.)

(b) Schools must comply with the following recordkeeping and reporting requirements:

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

(3) Spinal screening records are transferrable between schools without the [if written] consent of the individual or, if the individual is a minor, the minor's parent [their parent], managing conservator, or legal guardian [is obtained].

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

(c) All correspondence shall be submitted to the department under this subchapter, with the following contact information (unless otherwise specified): Vision, Hearing and Spinal Screening Program[, Mail Code 1978], Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347.

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 August 25, 2017.

TRD-201703330

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: October 8, 2017

For further information, please call: (512) 776-6972



## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

#### CHAPTER 307. TEXAS SURFACE WATER QUALITY STANDARDS

##### 30 TAC §§307.2, 307.3, 307.6, 307.7, 307.9, 307.10

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 30 TAC §§307.2, 307.3, 307.6, 307.7, 307.9, and 307.10 are not included in the print version of the Texas Register. The figures are available in the on-line version of the September 8, 2017, issue of the Texas Register.)*

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§307.2, 307.3, 307.6, 307.7, 307.9, and 307.10.

Background and Summary of the Factual Basis for the Proposed Rules

The Federal Water Pollution Control Act, or the Clean Water Act (1972), §303 (33 United States Code, §1313), requires all states to adopt water quality standards for surface water. A water quality standard consists of the designated beneficial uses of a water body or a segment of a water body and the water quality criteria that are necessary to protect those uses. Water quality standards are the basis for establishing effluent limits in wastewater permits, setting instream water quality goals for total maximum daily loads (TMDLs), and providing water quality targets used to assess water quality monitoring data.

The states are required under the Clean Water Act to review their water quality standards at least once every three years and revise them, if appropriate. States review the standards because new scientific and technical data may be available that have a bearing on the review. Environmental changes over time may also warrant the need for a review. Where the standards do not meet established uses, they must be periodically reviewed to see if uses can be attained. Additionally, water quality standards may have been previously established for the protection and propagation of aquatic life and for recreation in and on the water without sufficient data to determine whether the uses were attainable. Finally, changes in the Texas Water Code (TWC), Clean Water Act, or regulations issued by the United States Environmental Protection Agency (EPA) may necessitate reviewing and revising standards to ensure compliance with current statutes and regulations.

Following adoption of revised Texas Surface Water Quality Standards (TSWQS) by the commission, the Governor or their designee must submit the officially adopted standards to the EPA Region 6 Administrator for review. The Regional Administrator reviews the TSWQS to determine compliance with the Clean Water Act and implementing regulations. TSWQS are not applicable to regulatory actions under the Clean Water Act until approved by the EPA.

The TSWQS were last amended in February 2014. The EPA approved a portion of the state's revised standards in September 2014.

Reviews and revisions of the TSWQS address many provisions that apply statewide, such as criteria for toxic pollutants. They also address the water quality uses and criteria that are applicable to individual water bodies. An extensive review of water quality standards for individual water bodies is often initiated when the existing standards appear to be inappropriate for water bodies that are listed as impaired under the Clean Water Act, §303(d), or that are potentially affected by permitted wastewater discharges or other permitting actions.

States may modify existing designated uses or criteria when it can be demonstrated through a use-attainability analysis (UAA) that attaining the current designated uses or criteria is not appropriate. Most changes in designated uses or criteria are based on a demonstration that natural characteristics of a water body cannot attain the currently designated uses or criteria. Natural characteristics include temperature, pH, dissolved oxygen, diversity of aquatic organisms, amount of streamflow, physical conditions such as depth, and natural background pollutant levels. Conversely, a UAA might demonstrate that the currently designated uses and criteria are appropriate, or even that they should be more stringent.

UAAs can require several years of additional sampling studies, or they may focus on a long-term evaluation of existing historical data. For UAAs on water bodies that are potentially impacted by pollutant loadings above natural background levels, sampling and evaluation are often conducted on similar but relatively unimpacted water bodies to determine reference conditions that can be applied to the water body of concern.

The focus of UAAs depends on the uses and criteria that need to be reevaluated. The applicable aquatic life use is determined by repeatedly sampling fish or invertebrates in relatively unimpacted areas and applying quantitative indices, such as indices of biotic integrity, to the sampling data of the biological communities. UAAs to assign aquatic recreational uses include as-

sessing physical and hydrological conditions, observing existing recreation, and collecting information on current and historical recreational activities. Dissolved oxygen criteria are evaluated by monitoring dissolved oxygen over numerous (usually ten) 24-hour periods in relatively unimpacted areas. Site-specific criteria for toxic pollutants are evaluated by placing selected small aquatic organisms in water samples from the site and exposing them to different doses of the toxic pollutant of concern.

The commission is proposing editorial revisions as well as substantive changes. Editorial revisions would be adopted to improve clarity, make grammatical corrections, and renumber or re-letter subdivisions as appropriate.

Numerous revisions of toxic criteria are proposed to incorporate new data on toxicity effects. Other proposed revisions provide clarity on how water quality standards would be assessed using instream monitoring data for bacteria. Numerous revisions are also proposed for the uses and criteria of individual water bodies to incorporate new data and the results of recent UAAs.

#### Section by Section Discussion

##### §307.2, *Description of Standards*

The commission proposes to amend §307.2 to include language regarding temporary standards to comply with changes in federal rules listed in 40 Code of Federal Regulations (CFR) §131.14. These revisions clarify what standard applies when a criterion or designated use is not attained and cannot be attained for one or more reasons listed in 40 CFR §131.10(g) or to facilitate restoration activities. Other revisions are editorial and proposed to improve overall clarity.

##### §307.3, *Definitions and Abbreviations*

The commission proposes to amend §307.3 to add a definition for "Coastal recreation waters." Other revisions are editorial and proposed to improve overall clarity.

##### §307.6, *Toxic Materials*

The commission proposes to amend §307.6 to update references to guidance documents and sources used to calculate aquatic life and human health criteria. Other revisions are editorial and proposed to improve overall clarity.

Section 307.6(c)(1), Table 1, which lists numeric criteria for the protection of aquatic life, includes proposed revisions to the existing entry for carbaryl based on the EPA issuance of an updated national criteria document. Revisions also include the addition of acrolein to the table based on the EPA issuance of a new national criteria document.

Proposed changes to the human health criteria in §307.6(d)(1), Table 2, include the addition of the following four chemicals to the table: epichlorohydrin; ethylene glycol; 4,4'-isopropylidenediphenol; and methyl *tert*-butyl ether. Bioconcentration factor updates led to revisions of criteria for the following 18 noncarcinogens: anthracene; chlorobenzene; chloroform; *m*-dichlorobenzene; *o*-dichlorobenzene; 1,1-dichloroethylene; 2,4-dimethylphenol; di-*n*-butyl phthalate; endrin; hexachlorocyclohexane (*gamma*); hexachlorocyclopentadiene; methoxychlor; nitrobenzene; pentachlorobenzene; 1,2,4,5-tetrachlorobenzene; 2,4,5-TP (Silvex); 1,1,1-trichloroethane; and 2,4,5-trichlorophenol. Bioconcentration factor updates also led to revisions of criteria for the following 37 carcinogens: acrylonitrile; aldrin; benzene; benzin; benzin; benzo(a)anthracene; benzo(a)pyrene; bis(2-chloroethyl)ether; bromodichloromethane; bromoform; carbon tetrachloride; chlor-

dane; chrysene; 4,4'-DDD; 4,4'-DDE; 4,4'-DDT; bis(2-ethylhexyl)phthalate; chlorodibromomethane; 3,3'-dichlorobenzidine; 1,2-dichloroethane; dichloromethane; 1,2-dichloropropane; 1,3-dichloropropene; dieldrin; heptachlor; heptachlor epoxide; hexachlorobenzene; hexachlorobutadiene; hexachlorocyclohexane (*alpha*); hexachlorocyclohexane (*beta*); hexachloroethane; pentachlorophenol; 1,1,2,2-tetrachloroethane; tetrachloroethylene; toxaphene; 1,1,2-trichloroethane; trichloroethylene; and vinyl chloride. Revisions to footnotes were included to clarify what fish consumption rates were used to calculate mercury criteria and to cite the source for the new table entry for methyl *tert*-butyl ether.

##### §307.7, *Site-Specific Uses and Criteria*

The commission proposes an amendment to §307.7 to include an update of the saltwater single sample criterion for Enterococci from 104 per 100 milliliters (mL) to 130 per 100 mL in subsection (b)(1)(B)(i). Other revisions are editorial and proposed to improve overall clarity.

##### §307.9, *Determination of Standards Attainment*

The commission proposes an amendment to §307.9 to include basing attainment of bacteria standards in coastal recreation waters on both geometric mean and single sample criteria. Other revisions, including those regarding nutrient assessment, are editorial and proposed to improve overall clarity.

##### §307.10, *Appendices A - G*

The commission proposes an amendment to §307.10 to revise Appendices A - G. The proposed amendment to §307.10(1), Appendix A, includes the addition of a new segment, Blind Oso Bay (2486), based on the results of a UAA; changes to the footnote for the Houston Ship Channel Tidal (1006) and Houston Ship Channel/Buffalo Bayou Tidal (1007) to clarify that numerical toxic criteria applicable to sustainable fisheries apply to these segments; adding a footnote for Spring Creek (1008) to assign site-specific seasonal dissolved oxygen criteria based on the results of a UAA; adding a footnote for Mid Cibolo Creek (1913) to indicate that it is intermittent with perennial pools based on the results of a UAA; and removing the footnote for the Rio Grande Below Riverside Diversion Dam (2307) due to the removal of the Riverside Diversion Dam. The public water supply use for Cedar Bayou Above Tidal (0902) is proposed for removal due to a lack of public water supply intakes. Proposed changes also include changing the primary contact recreation use for Big Cypress Creek Below Lake Bob Sandlin (0404) to a secondary contact recreation 1 use with a corresponding change to the indicator bacteria criterion.

The following water bodies are proposed for deletion from §307.10(2), Appendix B, because they no longer qualify as sole-source drinking water supplies in accordance with TWC, §26.0286: Farmers Creek Reservoir (0210); Big Cypress Creek Below Lake O' the Pines (0402); Sabine River Above Caney Creek (0503); Sabine River Above Toledo Bend Reservoir (0505); Lower Neches Valley Authority Canal (0602); Neches River Below B.A. Steinhagen Lake (0602); Trinity River Tidal (0801); Lake Worth (0807); West Fork Trinity River Below Bridgeport Reservoir (0810); Lavon Lake (0821); Lake Grapevine (0826); Joe Pool Lake (0838); Lake Houston (1002); Brazos River Below Navasota River (1202); Lake Mexia (1210); Stillhouse Hollow Lake (1216); Leon Reservoir (1224); Waco Lake (1225); Lake Stamford (1235); White River Lake (1240); Lake Georgetown (1249); Lake Limestone (1252); Llano City Lake (1415); Brady Creek Reservoir (1416); Concho River

(1421); Lake Texana (1604); Guadalupe River Below San Antonio River (1802); Guadalupe River Below San Marcos River (1803); Lake Placid (1804); Lake Wood (1804); Guadalupe River Above Canyon Lake (1806); Lower San Marcos River (1808); Upper Blanco River (1813); Medina River Below Medina Diversion Lake (1903); and Boerne Lake (1908). Additions and deletions were made to the "County" column as needed to better describe the general location of the water body.

The proposed amendment to §307.10(3), Appendix C, includes a description for a new segment, Blind Oso Bay (2486), and revisions to the description of the existing related segment, Oso Bay (2485), based on the results of a UAA. Other changes include revisions for the upper boundary for Sabine River Tidal (0501) and lower boundary for Sabine River Above Tidal (0502) based on the results of a tidal influence study. Segment description revisions are proposed for Lower Cibolo Creek (1902), Mid Cibolo Creek (1913), and Upper Cibolo Creek (1908) to better define the flow regime based on the results of a UAA. Editorial changes were made to clarify other water body descriptions.

The proposed amendment to §307.10(4), Appendix D, includes the addition of eight water bodies along with their designated aquatic life uses and dissolved oxygen criteria. Some of the additions are due to the results of receiving water assessments; however, most are the result of more extensive investigations via UAAs. All the water bodies are tributaries within the listed segment numbers as follows: Bois d'Arc Creek (0202); Catfish Creek\* (0804); Elm Creek\* (1803); Sandies Creek\* (1803); Hurricane Levee Canal (2437); and Garcitas Creek\* (2453). Water bodies added because of UAAs are indicated with an asterisk (\*). UAAs also led to the revision of two existing Appendix D entries: Thompsons Creek (1242), which was given seasonal dissolved oxygen criteria, and Slaughter Creek (1427), which was divided into three entries in Appendix D to account for changing flow regimes as it passes over the Edwards Aquifer Recharge Zone and becomes intermittent. The flow regime for the existing entry for Bois d'Arc Creek (0202) was changed from perennial to intermittent with perennial pools based on U.S. Geological Survey gauge data. Editorial changes were made to correct clerical errors in water body descriptions and the dissolved oxygen criterion for Town Creek (0831), misspellings in stream names, and for overall consistency. Editorial changes to footnotes for numerous water bodies throughout Appendix D were made to improve clarity.

The proposed amendment to §307.10(5), Appendix E, includes the addition of five new site-specific copper water-effect ratios in the watersheds of segments 0601, 0820, 1008, 1014, and 2484. A site-specific water-effect ratio for aluminum is also proposed for Segment 1014 along with two site-specific water-effect ratios for zinc for segments 1006 and 1014. Some existing entries in the appendix have been reordered to arrange all table entries in numeric order by segment and then permit number.

The proposed amendment to §307.10(6), Appendix F, includes editorial changes to the opening text of the appendix and deletion of one footnote to improve clarity.

The proposed amendment to §307.10(7), Appendix G, includes changing the presumed use of primary contact recreation 1 with a corresponding criterion of 126 colonies per 100 mL to a secondary contact recreation 1 use with a corresponding criterion of 630 colonies per 100 mL for one unclassified water body in the Canadian River Basin, seven unclassified water bodies in the Red River Basin, two unclassified water bodies in the Cypress Creek Basin, five unclassified water bodies in the Sabine

River Basin, three unclassified water bodies in the Neches River Basin, one unclassified water body in the Trinity River Basin, 24 unclassified water bodies in the Brazos River Basin, one unclassified water body in the Brazos Colorado Coastal Basin, and one unclassified water body in the San Antonio-Nueces Coastal Basin. These proposed changes are based on the results from recreational UAAs.

The proposed amendment to §307.10(7), Appendix G, also includes, changing the presumed use of primary contact recreation 1 with a corresponding criterion of 126 colonies per 100 mL to a secondary contact recreation 2 use with a corresponding criterion of 1030 colonies per 100 mL for six unclassified water bodies in the Brazos River Basin. Proposed changes are based on the results from recreational UAAs.

#### 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 rules are in effect, no significant costs or cost savings have been identified for the agency or other units of state or local government as a result of the implementation of the proposed TSWQS.

The proposed rulemaking amends the TSWQS. The TSWQS are required by the TWC and the Clean Water Act. Revisions to the TSWQS are proposed to address new information and results from studies on the appropriate uses and criteria of individual water bodies, incorporate new scientific data on the effects of specific pollutants, and address new provisions in federal regulations and guidance of the EPA. The TWC stipulates that the TCEQ may amend the TSWQS from time to time, and the Clean Water Act directs that the TSWQS be reviewed and revised as needed every three years.

The TSWQS establish the instream water quality conditions for surface waters in the state. A water quality standard for a specific water body consists of designated beneficial uses and the water quality criteria that are necessary to protect the uses. The TSWQS are the basis for: 1) establishing discharge limits in wastewater permits; 2) setting instream water quality goals for TMDLs; and 3) providing water quality targets to assess water quality.

The proposed rulemaking includes numerous revisions of toxic criteria to incorporate new data on toxicity effects. Other revisions are proposed for the uses and criteria of individual water bodies in order to incorporate new data and the results of recent UAAs and recreational UAAs. Revisions are also made to provisions regarding temporary standards and coastal recreation waters to comply with the Clean Water Act.

For the proposed statewide aquatic life toxic criteria, three are new, one is more stringent than the current TSWQS, and none are less stringent than the current TSWQS. For the proposed statewide human health toxic criteria, nine are new, 69 are more stringent than the current TSWQS, and 24 are less stringent than the current TSWQS. Proposed site-specific aquatic life use and dissolved oxygen changes in §307.10(1) and (4), Appendices A and D, include six new water bodies. The existing entry for Slaughter Creek in §307.10(4), Appendix D, is now divided into three entries. Two of those entries have different flow regimes and therefore less stringent aquatic life and dissolved oxygen criteria than those found in the current rule. For the proposed changes to existing site-specific dissolved oxygen criteria in §307.10(1) and (4), Appendices A and D, one is more stringent and two have new footnotes with less stringent seasonal criteria. The proposed site-specific toxic criteria changes in §307.10(5),

Appendix E, include eight new water bodies. No criteria changes are being made to the existing entries of §307.10(5), Appendix E., The proposed site-specific bacteria criteria to protect recreation in §307.10(7), Appendix G, include 51 new water bodies with no changes to existing criteria.

Most of the revisions of statewide toxic criteria are based on federal guidance, but the state is afforded, and during this revision has used, a measure of discretion regarding which criteria to revise. Departures from federal guidance were based on valid scientific reasons which will be provided to the EPA when the rule is submitted for federal approval.

The effects of the revised TSWQS for the TCEQ are primarily operational and procedural. The statewide monitoring and assessment of surface water quality data, and the review of wastewater permit applications, will need to incorporate the changes and additions to numerical criteria.

Some effects of the rulemaking will require procedural and operational adjustments in the TCEQ water quality management programs to accommodate the proposed revisions. These effects will tend to be higher during the first two years after TCEQ adoption and EPA approval of the TSWQS.

No additional costs are anticipated for the TCEQ to implement the revisions to the TSWQS. The incorporation of revised criteria in wastewater permits will be facilitated by concurrent revisions in the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards*.

Several of the proposed revisions of the site-specific criteria for individual water bodies in §307.10 are intended to address water bodies that are listed as impaired because of apparent inappropriate water quality standards. In these cases, the proposed revisions to the TSWQS can streamline the TCEQ's water quality management program by curtailing unnecessary restorative activities, such as TMDLs, for water bodies that are currently identified as being impaired and redirecting funds to water bodies where restoration activities are needed.

The proposed changes for dissolved oxygen and aquatic life criteria in §307.10(1), Appendix A, for classified water bodies, and §307.10(4), Appendix D, for unclassified water bodies, will remove two impairments from the current Texas 303(d) List of impaired waters. There are 51 proposed additions to §307.10(7), Appendix G, which designates site-specific contact recreation criteria. The changes in §307.10(7), Appendix G, will result in the removal of 50 impairments from the current Texas 303(d) List of impaired waters. Where appropriate, the removal of water bodies that are listed for dissolved oxygen impairments or contact recreation impairments also eliminates the need for a study to define a TMDL for these water bodies.

According to the agency staff on the TMDL Team, a typical TMDL costs approximately \$87,000 per assessment unit (AU). If the proposed amendment delist 50 impairments or AUs, the agency may realize cost savings of approximately \$1,450,000 each year for the second, third, and fourth years covered by this fiscal note due to the elimination of the need for a study to define a TMDL. The delisting of two AUs in §307.10(1) and (4), Appendices A and D, may result in additional cost savings projected to be \$58,000 each year for the second, third, and fourth years for the five-year period covered by this fiscal note. These cost savings will be redirected to water bodies where restoration activities are needed.

No significant costs or cost savings have been identified for other state agencies or units of local government as a result of the implementation of the proposed TSWQS. Any potential cost increases would primarily be for certain units of state or local government that own and operate wastewater facilities that discharge into Texas water bodies who may need to perform additional monitoring and reporting or upgrade their facilities. These upgrades may range from making changes in treatment processes to renovation or construction of new wastewater treatment facilities.

The proposed amendment to §307.10(1) and (4), Appendices A and D, includes six new and four revised entries which result in dissolved oxygen criteria that are less stringent than the criteria currently being applied to these water bodies. A cost analysis did not indicate an immediate cost savings for the affected facilities.

#### *Other State Agencies*

State agencies that operate permitted domestic wastewater discharges include the Texas Department of Criminal Justice, Texas Parks and Wildlife Department, Texas Department of Transportation, and certain state universities and schools. Domestic wastewater permits are the permits that are primarily affected by the applicable dissolved oxygen criteria in the TSWQS.

In addition, the TSWQS have indirect effects on the operation of environmental programs of other state agencies. The Texas State Soil and Water Conservation Board coordinates nonpoint source programs and watershed plans related to agriculture under the Clean Water Act, §319. The location of watershed plans is affected in part by whether a water body is considered to be meeting water quality standards. Changes to the TSWQS may result in some water bodies being added or removed from the current Texas 303(d) List of impaired waters and affect priorities for watershed plans.

The Texas Water Development Board administers loans for wastewater treatment plant construction under the Clean Water Act, Title 2. The water quality standards for dissolved oxygen have a bearing on the level of wastewater treatment needed and, therefore, on the appropriate amount and priority of a loan. The proposed changes to site-specific water quality standards for dissolved oxygen can increase or decrease the required treatment levels. In rare instances, numerical toxic criteria can affect domestic wastewater permits of state agencies, but the number of affected permits cannot be predicted.

#### *Local Governments*

The TSWQS can directly affect permitted wastewater discharges in Texas. Governmental entities with permitted discharges of domestic wastewater include cities, water districts, municipal utility districts, and river authorities. A relatively small number of governmental entities have permits for industrial wastewater discharges, and these permits are primarily for: 1) discharges related to public electricity generating facilities; or 2) discharges related to salt reduction at public drinking water treatment plants.

There are approximately 2,042 domestic discharge facilities with permits issued under the Texas Pollutant Discharge Elimination System. An estimated 1,423 of these permittees are governmental entities. Permits are issued for up to a five-year period, so that approximately 284 of the permits for governmental entities are reissued each year. There are approximately 10 wastewater permits associated with electricity generation by governmental entities.

The proposed amendment applies to state, municipal, agricultural, and industrial facilities that discharge wastewater directly into bodies of water in Texas. The proposed amendment has cost implications associated with revised criteria for toxic substances to protect human health and aquatic life, revised criteria for recreational uses, and revised dissolved oxygen criteria and aquatic life uses for classified and unclassified water bodies. Cost implications are generally associated with chemical screening and monitoring and the additional treatment of wastewater which may be needed to meet the TSWQS. Dischargers may have to change or employ new wastewater treatment methods or techniques to meet the proposed TSWQS. These changes may range from developing new wastewater processes to building a new wastewater treatment facility. The costs for state agencies and municipalities affected by the proposed amendment are anticipated to be similar to those for other entities.

The proposed changes in dissolved oxygen criteria can affect local governments that operate domestic wastewater facilities. In the absence of site-specific information, unclassified perennial water bodies are assigned a presumed high aquatic life use and associated dissolved oxygen criteria. None of the proposed revisions for dissolved oxygen criteria for classified segments in §307.10(1) or (4), Appendix A or D, are anticipated to require more stringent treatment by domestic wastewater facilities.

The proposed amendment to §307.10(1) and (4), Appendices A and D, includes six new and four revised entries which result in dissolved oxygen criteria that are less stringent than the criteria currently being applied to these water bodies. Estimates were completed to determine potential savings to dischargers located in these watersheds. The analysis did not indicate an immediate cost savings for the facilities; however, there are approximately 12 domestic permittees and 14 industrial permittees which discharge directly to, or near, these water bodies. Future expansions of these facilities may be facilitated by the proposed revisions.

#### Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from enforcement of, and compliance with, the proposed rules will result in increased protection of public drinking water supplies and aquatic life resources, an improved regulatory process for permitted wastewater discharges, and potentially improved quality of the surface water resources of the state.

The proposed rules are intended to establish instream water quality standards in accordance with the TWC and will satisfy federal requirements for a triennial review of the TSWQS. In addition, the proposed site-specific standards are necessary to incorporate new water quality sampling data and establish the appropriate revisions in the rule so permit issues for specific water bodies may be resolved. The proposed changes to the TSWQS can also help streamline the TCEQ's water quality management program by curtailing unnecessary restorative activities, such as TMDLs, for water bodies that are currently identified as being impaired and redirecting funds to water bodies where restoration activities are needed.

The proposed rules are not anticipated to result in significant fiscal implications for businesses or individuals. No significant costs or cost savings have been identified for affected facilities as a result of the implementation of the proposed TSWQS.

On a statewide basis, wastewater discharge facilities monitor toxic substances to protect human health and aquatic life. There

are approximately 529 wastewater permits for industrial facilities in Texas. When applying for permit renewals or amendments, industrial facilities provide substantial sampling data on a broad range of toxic pollutants that are potentially in their effluents. The screening data are evaluated to ensure compliance with the toxic criteria in the TSWQS and determine if permit limits or monitoring requirements may be required. In the proposed revisions, 70 toxic criteria become more stringent, 24 become less stringent, 215 remain unchanged, and 12 new toxic criteria are added.

It is anticipated that the majority of facilities affected by the revised toxic criteria will be industrial facilities. Although the proposed amendment includes new pollutants and various criteria changes to existing criteria, which will result in both increases and decreases in permit limits, there are no additional costs associated with facilities or the commission because the TCEQ currently screens and requires monitoring for these substances.

New site-specific metals criteria proposed for eight sites in §307.10(5), Appendix E are less stringent than the existing criteria. It is anticipated the site-specific criteria in the proposed rulemaking will avoid the imposition of inappropriately stringent criteria for a minimum of seven industrial discharge permits.

Where applicable, the costs associated with compliance with toxic standards will be determined by the size and current condition of a facility, the extent of current controls, and the nature of the wastewater and receiving waters. Because of the variability in receiving waters, the number of toxic substances, and the current condition of treatment facilities, an engineering study and design may be required to determine the extent of any facility or process changes that might be required in order to comply with the proposed requirements. This variability precludes calculation of specific costs associated with achieving proposed standards for toxic substances.

#### Small Business and Micro-Business Assessment

In general, no adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. However, some economic effects are anticipated for small businesses and micro-businesses as a result of implementing the proposed rules. Small and micro-businesses served by municipal or commercial wastewater facilities may indirectly incur increased service rates from local governments or other operators of treatment facilities that must recover increased wastewater treatment costs from their customers. Major municipal wastewater treatment systems are required by the TCEQ and EPA to establish programs that specify effluent requirements for small industries and businesses that discharge pollutants to city sewer systems. The levels of treatment required for these dischargers to sewer systems are affected by the toxic criteria in the TSWQS, since the rule determine what effluent limits are needed for a wastewater discharge. Because of the variability in treatment costs and facility characteristics and rates, the costs to customers are virtually impossible to estimate for the regulated community. However, given the limited impact of the proposed rules, if facility upgrade costs are capitalized and annualized, the effect on ratepayers should be minimal if the customer base is of a moderate size.

#### Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules will not adversely affect a small or micro-business in a material way for the first five years

that the proposed rules are in effect and are necessary to comply with state and federal law.

#### Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules will not adversely affect a local economy in a material way for the first five years that the proposed rules are 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 any of the four applicability criteria listed in Texas Government Code §2001.0225(a). According to subsection (a), §2001.0225 only applies to a major environmental rule, the result of which is to exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; 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 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 does not exceed a standard set by federal law; does not exceed an express requirement of state law; 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 is not proposed solely under the general powers of the agency but, rather, specifically under 33 United States Code, §1313(c), which requires states to adopt water quality standards and review them at least once every three years; and TWC, §26.023, which requires the commission to set water quality standards and allows the commission to amend them. Therefore, this proposed rulemaking 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 rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rulemaking is to incorporate changes to the TSWQS deemed necessary based on the commission's triennial review of the TSWQS, which mainly consist of incorporating new data on toxicity effects and from recent UAAs and clarifying how water quality standards related to bacteria would be assessed using instream monitoring data. The proposed rulemaking would substantially advance this stated purpose by making revisions to toxic criteria, individual water bodies' uses and criteria, and bacteria standards attainment criteria in Chapter 307 of the commission's rules.

The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking 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). Clean Water Act, §303 requires the State of Texas to adopt water quality standards, review those standards at least once every three years, and revise the standards as necessary based on the review. TWC, §26.023 delegates the responsibility of adopting and revising the standards to the commission.

Nevertheless, the commission further evaluated this proposed rulemaking and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rules do not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit an owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the rules. In other words, this rulemaking makes necessary revisions to the TSWQS without burdening, restricting, or limiting an owner's right to property and reducing its value by 25% or more. Therefore, the proposed rulemaking 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 et seq., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with the Coastal Coordination Act Implementation Rules, 31 Texas Administrative Code (TAC) §505.22, and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rules include protecting, preserving, restoring, and enhancing the diversity, quality, quantity, functions, and values of coastal natural resources by establishing standards and criteria for instream water quality for Texas streams, rivers, lakes, estuaries, wetlands, and other water bodies. These proposed water quality standards and criteria will provide parameters for permitted discharges that will protect, preserve, restore, and enhance the quality, functions, and values of coastal natural resources.

CMP policies applicable to the proposed rules include 31 TAC §501.21. The proposed rulemaking will require wastewater discharge permit applicants to provide information and monitoring data to the commission so the commission may make an informed decision in authorizing a discharge permit and ensuring the authorized activities in a wastewater discharge permit comply with all applicable requirements, thus making the rulemaking consistent with the administrative policies of the CMP.

The proposed rulemaking considers information gathered through the biennial assessments of water quality in the commission's Integrated Report of Surface Water Quality to prioritize coastal waters for studies and analysis when reviewing and revising the TSWQS. The TSWQS are established to protect designated uses of coastal waters, including protecting uses for recreational purposes and propagating and protecting terrestrial and aquatic life. The proposed rulemaking is consistent with the CMP's policies for discharges of municipal and industrial wastewater to coastal waters and how they relate to specific activities and coastal natural resource areas.



Promulgation and enforcement of these proposed rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies, do not create or have a direct or significant adverse effect on any coastal natural resource areas, and do 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 16, 2017, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The webcast from this hearing may be viewed at <http://www.texasadmin.com/tceqs.shtml>. 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 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

#### Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, 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://www1.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 2016-002-307-OW. The comment period closes on October 17, 2017. Copies of the proposed rulemaking can be obtained from the commission's website at [http://www.tceq.texas.gov/rules/propose\\_adopt.html](http://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Debbie Miller, Monitoring and Assessment Section, at (512) 239-1703.

#### Statutory Authority

The amendments are 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, §26.011, which authorizes the commission to establish the level of quality to be maintained in and control the quality of water in the state; TWC, §26.0135, which authorizes the commission to monitor and assess the water quality of each watershed and river basin in the state; TWC, §26.023, which authorizes the commission to set water quality standards for water in the state by rule; TWC, §26.027, which authorizes the commission to issue permits; and TWC, §26.121, which provides the commission's authority to prohibit unauthorized discharges; and 33 United States Code, §1313, which requires states to adopt wa-

ter quality standards and review them at least once every three years.

The amendments implement TWC, §26.023.

#### §307.2. Description of Standards.

##### (a) Contents of the Texas Surface Water Quality Standards.

(1) Section 307.1 of this title (relating to General Policy Statement) contains the general standards policy of the commission.

(2) This section lists the major sections of the standards, defines basin classification categories, describes justifications for standards modifications, and provides the effective dates of the rules.

(3) Section 307.3 of this title (relating to Definitions and Abbreviations) defines terms and abbreviations used in the standards.

(4) Section 307.4 of this title (relating to General Criteria) lists the general criteria that are applicable to all surface waters of the state unless specifically excepted in §307.8 of this title (relating to Application of Standards) or §307.9 of this title (relating to Determination of Standards Attainment).

(5) Section 307.5 of this title (relating to Antidegradation) describes the antidegradation policy and implementation procedures.

(6) Section 307.6 of this title (relating to Toxic Materials) establishes criteria and control procedures for specific toxic substances and total toxicity.

(7) Section 307.7 of this title (relating to Site-Specific Uses and Criteria) defines appropriate water uses and supporting criteria for site-specific standards.

(8) Section 307.8 of this title [~~relating to the Application of Standards~~] sets forth conditions when portions of the standards do not apply - such as in mixing zones or below critical low-flows.

(9) Section 307.9 of this title describes sampling and analytical procedures to determine standards attainment.

(10) Section 307.10 of this title (relating to Appendices A - G) lists site-specific standards and supporting information for classified segments (Appendices A and C), water bodies that are sole-source surface drinking water supplies (Appendix B), site-specific uses and criteria for unclassified water bodies (Appendix D), site-specific toxic criteria that may be derived for any water in the state (Appendix E), chlorophyll *a* criteria for selected reservoirs (Appendix F), and site-specific recreational uses and criteria for unclassified water bodies (Appendix G). Specific appendices are as follows:

(A) Appendix A - Site-specific Uses and Criteria for Classified Segments;

(B) Appendix B - Sole-source Surface Drinking Water Supplies;

(C) Appendix C - Segment Descriptions;

(D) Appendix D - Site-specific Uses and Criteria for Unclassified Water Bodies;

(E) Appendix E - Site-specific Toxic Criteria;

(F) Appendix F - Site-specific Nutrient Criteria for Selected Reservoirs; and

(G) Appendix G - Site-specific Recreational Uses and Criteria for Unclassified Water Bodies.

(b) Applicability. The Texas Surface Water Quality Standards apply to surface waters in the state - including wetlands.

(c) Classification of surface waters. The major surface waters of the state are classified as segments for purposes of water quality management and designation of site-specific standards. Classified segments are aggregated by basin, and basins are categorized as follows:

(1) River basin waters. Surface inland waters comprising the major rivers and their tributaries, including listed impounded waters and the tidal portion of rivers to the extent that they are confined in channels.

(2) Coastal basin waters. Surface inland waters, including listed impounded waters but exclusive of paragraph (1) of this subsection, discharging, flowing, or otherwise communicating with bays or the gulf, including the tidal portion of streams to the extent that they are confined in channels.

(3) Bay waters. All tidal waters, exclusive of those included in river basin waters, coastal basin waters, and gulf waters.

(4) Gulf waters. Waters that are not included in or do not form a part of any bay or estuary but that are a part of the open waters of the Gulf of Mexico to the limit of the state's jurisdiction.

(d) Modification of standards.

(1) The commission reserves the right to amend these standards following the completion of special studies.

(2) Any errors in water quality standards resulting from clerical errors or errors in data may be corrected by the commission through amendment of the affected standards. Water quality standards not affected by such clerical errors or errors in data remain valid until changed by the commission.

(3) The narrative provisions, presumed uses, designated uses, and numerical criteria of the Texas Surface Water Quality Standards may be amended for a specific water body to account for local conditions. A site-specific standard is an explicit amendment to this chapter [title, Chapter 307 (Texas Surface Water Quality Standards)], and adoption of a site-specific standard requires the procedures for public notice and hearing established under the Texas Water Code, §26.024 and §26.025. An amendment that establishes a site-specific standard requires a use-attainability analysis that demonstrates that reasonably attainable water-quality related uses are protected. Upon adoption, site-specific amendments to the standards will be listed in §307.10 of this title.

(4) Factors that may justify the development of site-specific standards are described in §307.4 and §§307.6 - 307.8 [§§307.4, 307.6, 307.7, and 307.8] of this title.

(5) Temporary variance. When scientific information indicates that a site-specific standards amendment is justified, the commission may allow a corresponding temporary variance to the water quality standards in a permit for a discharge of wastewater or stormwater.

(A) A temporary variance is only applicable to an existing permitted discharge.

(B) A permittee may apply for a temporary variance prior to or during the permit application process. The temporary variance request must be included in a public notice during the permit application process. An opportunity for public comment is provided, and the request may be considered in any public hearing on the permit application.

(C) A temporary variance for a Texas Pollutant Discharge Elimination System permit also requires review and approval by the United States Environmental Protection Agency (EPA) during the permitting process.

(D) The permit must contain effluent limitations that protect existing uses and preclude degradation of existing water quality, and the term of the permit must not exceed three years. Effluent limitations that are needed to meet the existing standards are listed in the permit and are effective immediately as final permit effluent limitations in the succeeding permit, unless the permittee fulfills the requirements of the conditions for the variance in the permit.

(E) When the permittee has complied with the terms of the conditions in the temporary variance, then the succeeding permit may include a permit schedule to meet standards in accordance with subsection (f) of this section. The succeeding permit may also extend the temporary variance in accordance with subsection (f) of this section in order to allow additional time for a site-specific standard to be adopted in this chapter [title]. This extension can be approved by the commission only after a site-specific study that supports a standards change is completed and the commission agrees the completed study supports a change in the applicable standard(s).

(F) Site-specific standards that are developed under a temporary variance must be expeditiously proposed and publicly considered for adoption at the earliest opportunity.

(e) Standards implementation procedures. Provisions for implementing the water quality standards are described in a document entitled *Procedures to Implement the Texas Surface Water Quality Standards* (RG-194) as amended and approved by the Texas Commission on Environmental Quality and EPA.

(f) Permit schedules to meet standards. Upon permit amendment or permit renewal, the commission may establish interim effluent limitations to allow a permittee time to modify effluent quality in order to attain final effluent limitations. The duration of any interim effluent limitations may not be longer than three years from the effective date of the permit issuance, except in accordance with a temporary variance as described in subsection (d)(5) of this section.

(g) Temporary standards. Where a criterion or designated use is not attained and cannot be attained for one or more of the reasons listed in 40 Code of Federal Regulations (CFR) §131.10(g), or to facilitate restoration or reconfiguration activities that preclude the attainment of the designated use or criterion, then a temporary standard for specific water bodies or permittees may be adopted in §307.10 of this title as an alternative to changing uses. A [criterion that is established as a temporary standard must be adopted in accordance with the provisions of subsection (d)(3) of this section] temporary standard identifies the interim numerical criteria or use that applies during the existence of the temporary standard. A temporary standard must be adopted in accordance with the provisions of subsection (d)(3) of this section. Once adopted, a temporary standard is the applicable standard for the purposes of developing wastewater discharge permit limits and issuing certifications specified in the federal Clean Water Act, §401 and Chapter 279 of this title (relating to Water Quality Certification). Specific reasons and additional procedures for justifying a temporary standard are provided in the standards implementation procedures. A temporary standard must identify the water body or permittee to which [water bodies where] the temporary standard [criterion] applies. [A temporary standard identifies the numerical criteria that apply during the existence of the temporary standard.] A temporary standard does not exempt any discharge from compliance with applicable technology-based effluent limits. A temporary standard must be reevaluated every five years at a minimum, which may be conducted through the permit process if a triennial review of the Texas Surface Water Quality Standards has not occurred. A temporary standard expires no later than the completion of the next triennial review [revision] of the Texas Surface Water Quality Standards. When a temporary standard expires, subsequent discharge permits are issued to meet the applicable existing water quality stan-

dards. If a temporary standard is sufficiently justified in accordance with the provisions of subsection (d)(3) of this section, it can be renewed during revisions of the Texas Surface Water Quality Standards. A temporary standard cannot be established that would impair an existing use.

(h) Effective date of standards. Except as provided in 40 CFR §131.21 (EPA review and approval of water quality standards), this chapter becomes [these rules become] effective 20 days after the date the chapter is [they are] filed in the Office of the Secretary of State [office of the secretary of state]. As to actions covered by 40 CFR §131.21, the rules become effective upon approval by EPA.

(i) Effect of conflict or invalidity of rule.

(1) If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the provisions contained in this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

(2) To the extent of any irreconcilable conflict between provisions of this chapter and other rules of the commission, the provisions of this chapter supersede.

### §307.3. *Definitions and Abbreviations.*

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

(1) Acute toxicity--Toxicity that exerts a stimulus severe enough to rapidly induce an effect. The duration of exposure applicable to acute toxicity is typically 96 hours or less. Tests of total toxicity normally use lethality as the measure of acute impacts. (Direct thermal impacts are excluded from definitions of toxicity.)

(2) Ambient--Refers to the existing water quality in a particular water body.

(3) Aquatic vegetation--Refers to aquatic organisms, i.e., plant life, found in the water and includes phytoplankton; algae, both attached and floating; and vascular and nonvascular plants, both rooted and floating.

(4) Attainable use--A use that can be reasonably achieved by a water body in accordance with its physical, biological, and chemical characteristics whether it is currently meeting that use or not. Guidelines for the determination and review of attainable uses are provided in the standards implementation procedures. The designated use, existing use, or presumed use of a water body may not necessarily be the attainable use.

(5) Background--Refers to the water quality in a particular water body that would occur if that water body were relatively unaffected by human activities.

(6) Bedslope--Stream gradient, or the extent of the drop in elevation encountered as the stream flows downhill. One measure of bedslope is the elevation decline in meters over the stream distance in kilometers.

(7) Best management practices--Schedules of activities, maintenance procedures, and other management practices to prevent or reduce the pollution of water in the state from point and nonpoint sources, to the maximum extent practicable. Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(8) Bioaccumulative--Describes a chemical that is taken up by aquatic organisms from water directly or through the consumption of food containing the chemical.

(9) Bioconcentration factor--A unitless value describing the degree to which a chemical can be concentrated in the tissues of an organism in the aquatic environment and that is absorbed directly from the water. The bioconcentration factor is the ratio of a chemical's concentration in the tissue of an organism compared to that chemical's average concentration in the surrounding water.

(10) Biological integrity--The species composition, diversity, and functional organization of a community of organisms in an environment relatively unaffected by pollution.

(11) Biotic ligand model--A metal bioavailability model that uses receiving water body characteristics to develop site-specific water quality criteria.

(12) Chronic toxicity--Toxicity that continues for a long-term period after exposure to toxic substances. Chronic exposure produces sub-lethal effects, such as growth impairment and reduced reproductive success, but it may also produce lethality. The duration of exposure applicable to the most common chronic toxicity test is seven days or more.

(13) Classified--Refers to a water body that is listed and described in Appendices A and C of [Appendix A and Appendix C in] §307.10 of this title (relating to Appendices A - G). Site-specific uses and criteria for classified water bodies are listed in Appendix A of §307.10 of this title.

(14) Coastal recreation waters--Marine coastal waters including oceans, coastal estuaries, and bays designated as primary contact recreation 1 or 2. Waters upstream of an unimpaired natural connection to the open sea or tidal inland waters are not considered coastal recreation waters (e.g., tidal rivers or streams).

(15) [(14)] Commission--Texas Commission on Environmental Quality.

(16) [(15)] Criteria--Water quality conditions that are to be met in order to support and protect desired uses, i.e., existing, designated, attainable, and presumed uses.

(17) [(16)] Critical low-flow--Low-flow condition that consists of the seven-day, two-year low-flow [(7Q2 flow)] or the alternative low-flows for spring-fed streams as discussed in §307.8(a)(2) of this title (relating to Application of Standards) and below which some standards do not apply.

(18) [(17)] Designated use--A use that is assigned to specific water bodies in Appendix A, D, or G of [Appendix D, or Appendix G in] §307.10 of this title (relating to Appendices A - G). Typical uses that may be designated for specific water bodies include domestic water supply, categories of aquatic life use, recreation categories, and aquifer protection.

(19) [(18)] Discharge permit--A permit issued by the state or a federal agency to discharge treated effluent or cooling water into waters of the state.

(20) [(19)] Dry weather flows--Sustained or typical dry, warm-weather flows between rainfall events, excluding unusual antecedent conditions of drought or wet weather.

(21) [(20)] EC<sub>50</sub>--The concentration of a toxicant that produces an adverse effect on 50% of the organisms tested in a specified time period.

(22) [(21)] *E. coli--Escherichia coli*, a subgroup of fecal coliform bacteria that is present in the intestinal tracts and feces of warm-blooded animals. It is used as an indicator of the potential presence of pathogens.

(23) [(22)] Effluent--Wastewater discharged from any point source prior to entering a water body.

(24) [(23)] Enterococci--A subgroup of fecal streptococci bacteria (mainly *Streptococcus faecalis* and *Streptococcus faecium* that is present in the intestinal tracts and feces of warm-blooded animals. It is used as an indicator of the potential presence of pathogens.

(25) [(24)] Epilimnion--The upper mixed layer of a lake (including impoundments, ponds, and reservoirs).

(26) [(25)] Existing use--A use that is currently being supported by a specific water body or that was attained on or after November 28, 1975.

(27) [(26)] Fecal coliform--A portion of the coliform bacteria group that is present in the intestinal tracts and feces of warm-blooded animals; heat tolerant bacteria from other sources can sometimes be included. It is used as an indicator of the potential presence of pathogens.

(28) [(27)] Freshwaters--Inland waters that exhibit no measurable elevation changes due to normal tides.

(29) [(28)] Halocline--A vertical gradient in salinity under conditions of density stratification that is usually recognized as the point where salinity exhibits the greatest difference in the vertical direction.

(30) [(29)] Harmonic mean flow--A measure of mean flow in a water course that is calculated by summing the reciprocals of the individual flow measurements, dividing this sum by the number of measurements, and then calculating the reciprocal of the resulting number.

(31) [(30)] Incidental fishery--A level of fishery that applies to water bodies that are not considered to have a sustainable fishery but that have an aquatic life use of limited, intermediate, high, or exceptional.

(32) [(31)] Industrial cooling impoundment--An impoundment that is owned or operated by, or in conjunction with, the water rights permittee, and that is designed and constructed for the primary purpose of reducing the temperature and removing heat from an industrial effluent.

(33) [(32)] Industrial cooling water area--A designated area associated with a permitted wastewater discharge where numerical temperature criteria are not applicable in accordance with conditions and requirements specified in §307.4(f) of this title (relating to General Criteria) and §307.8(b) of this title (relating to Application of Standards).

(34) [(33)] Intermittent stream--A stream that has a period of zero flow for at least one week during most years. Where flow records are available, a stream with a seven-day, two-year low-flow [7Q2 flow] of less than 0.1 cubic feet per second is considered intermittent.

(35) [(34)] Intermittent stream with perennial pools--An intermittent stream that maintains persistent pools even when flow in the stream is less than 0.1 cubic feet per second.

(36) [(35)] LC<sub>50</sub>--The concentration of a toxicant that is lethal (fatal) to 50% of the organisms tested in a specified time period.

(37) [(36)] Main pool station--A monitoring station that is located in the main body of a reservoir near the dam and not located in a cove or in the riverine portion or transition zone of a reservoir.

(38) [(37)] Method detection limit--The minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte. The method detection limit [(MDL)] is estimated in accordance with 40 Code of Federal Regulations Part 136, Appendix B.

(39) [(38)] Minimum analytical level--The lowest concentration that a particular substance can be quantitatively measured with a defined accuracy and precision level using approved analytical methods. The minimum analytical level is not the published method detection limit [MDL] for a United States Environmental Protection Agency [(EPA)]-approved analytical method that is based on laboratory analysis of the substance in reagent (distilled) water. The minimum analytical level is based on analyses of the analyte in the matrix of concern (e.g., wastewater effluents). The commission establishes general minimum analytical levels that are applicable when information on matrix-specific minimum analytical levels is unavailable.

(40) [(39)] Mixing zone--The area contiguous to a permitted discharge where mixing with receiving waters takes place and where specified criteria, as listed in §307.8(b)(1) of this title (relating to Application of Standards), can be exceeded. Acute toxicity to aquatic organisms is not allowed in a mixing zone, and chronic toxicity to aquatic organisms is not allowed beyond a mixing zone.

(41) [(40)] Noncontact recreation--Activities that do not involve a significant risk of water ingestion, such as those with limited body contact incidental to shoreline activity, including birding, hiking, and biking. Noncontact recreation use may also be assigned where primary and secondary contact recreation activities should not occur because of unsafe conditions, such as ship and barge traffic.

(42) [(41)] Nonpersistent--Describes a toxic substance that readily degrades in the aquatic environment, exhibits a half-life of less than 60 days, and does not have a tendency to accumulate in organisms.

(43) [(42)] Nutrient criteria--Numeric and narrative criteria that are established to protect surface waters from excessive growth of aquatic vegetation. Nutrient numeric criteria for reservoirs are expressed in terms of chlorophyll *a* concentration per unit volume as a measure of phytoplankton density.

(44) [(43)] Nutrient--A chemical constituent, most commonly a form of nitrogen or phosphorus, that in excess can contribute to the undesirable growth of aquatic vegetation and impact uses as defined in this title.

(45) [(44)] Oyster waters--Waters producing edible species of clams, oysters, or mussels.

(46) [(45)] Persistent--Describes a toxic substance that is not readily degraded and exhibits a half-life of 60 days or more in an aquatic environment.

(47) [(46)] Pollution--The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(48) [(47)] Point source--Any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating

craft, from which pollutants or wastes are or may be discharged into or adjacent to any water in the state.

(49) [(48)] Presumed use--A use that is assigned to generic categories of water bodies (such as perennial streams). Presumed uses are superseded by designated uses for individual water bodies in Appendix A, D, or G [Appendix D, or Appendix G] of §307.10 of this title (relating to Appendices A - G).

(50) [(49)] Primary contact recreation 1--Activities that are presumed to involve a significant risk of ingestion of water (e.g., wading by children, swimming, water skiing, diving, tubing, surfing, hand-fishing as defined by Texas Parks and Wildlife Code, §66.115, and the following whitewater activities: kayaking, canoeing, and rafting).

(51) [(50)] Primary contact recreation 2--Water recreation activities, such as wading by children, swimming, water skiing, diving, tubing, surfing, handfishing as defined by Texas Parks and Wildlife Code, §66.115, and whitewater kayaking, canoeing, and rafting, that involve a significant risk of ingestion of water but that occur less frequently than for primary contact recreation 1 due to:

- (A) physical characteristics of the water body; or
- (B) limited public access.

(52) [(51)] Protection zone--Any area within the watershed of a sole-source surface drinking water supply that is:

(A) within two miles of the normal pool elevation of a body of surface water that is a sole-source surface drinking water supply;

(B) within two miles of that part of a perennial stream that is:

(i) a tributary of a sole-source surface drinking water supply; and

(ii) within three linear miles upstream of the normal pool elevation of a sole-source surface drinking water supply; or

(C) within two miles of that part of a stream that is a sole-source surface drinking water supply, extending three linear miles upstream from the water supply intake (Texas Water Code, §26.0286).

(53) [(52)] Public drinking water supply--A water body designated to provide water to a public water system as defined in Chapter 290 of this title (relating to Public Drinking Water).

(54) [(53)] Saltwater--A coastal water that has a measurable elevation change due to normal tides. In the absence of tidal information, saltwater is generally considered to be a coastal water that typically has a salinity of two parts per thousand or greater in a significant portion of the water column.

(55) [(54)] Salinity--The total dissolved solids in water after all carbonates have been converted to oxides, all bromide and iodide have been replaced by chloride, and all organic matter has been oxidized. For most purposes, salinity is considered equivalent to total dissolved salt content. Salinity is usually expressed in parts per thousand.

(56) [(55)] Seagrass propagation--A water-quality-related existing use that applies to saltwater with significant stands of submerged seagrass.

(57) [(56)] Secondary contact recreation 1--Activities that commonly occur but have limited body contact incidental to shoreline activity (e.g. fishing, canoeing, kayaking, rafting, and motor boating). These activities are presumed to pose a less significant risk of water in-

gestion than primary contact recreation 1 or 2 but more than secondary contact recreation 2.

(58) [(57)] Secondary contact recreation 2--Activities with limited body contact incidental to shoreline activity (e.g. fishing, canoeing, kayaking, rafting, and motor boating) that are presumed to pose a less significant risk of water ingestion than secondary contact recreation 1. These activities occur less frequently than secondary contact recreation 1 due to physical characteristics of the water body or limited public access.

(59) [(58)] Segment--A water body or portion of a water body that is individually defined and classified in Appendices A and C of §307.10 of this title (relating to Appendices A - G) in the Texas Surface Water Quality Standards. A segment is intended to have relatively homogeneous chemical, physical, and hydrological characteristics. A segment provides a basic unit for assigning site-specific standards and for applying water quality management programs of the agency. Classified segments may include streams, rivers, bays, estuaries, wetlands, lakes, or reservoirs.

(60) [(59)] Settleable solids--The volume or weight of material that settles out of a water sample in a specified period of time.

(61) [(60)] Seven-day, two-year low-flow (7Q2)--The lowest average stream flow for seven consecutive days with a recurrence interval of two years, as statistically determined from historical data. As specified in §307.8 of this title, some water quality standards do not apply at stream flows that are less than the 7Q2 flow.

(62) [(61)] Shellfish--Clams, oysters, mussels, crabs, crayfish, lobsters, and shrimp.

(63) [(62)] Sole-source surface drinking water supply--A body of surface water that is identified as a public water supply in rules adopted by the commission under Texas Water Code, §26.023 and is the sole source of supply of a public water supply system, exclusive of emergency water connections (Texas Water Code, §26.0286).

(64) [(63)] Standard Methods for the Examination of Water and Wastewater--A document describing sampling and analytical procedures that is published by the American Public Health Association, American Water Works Association, and Water Environment Federation. The most recent edition of this document is to be followed whenever its use is specified by this chapter [these rules].

(65) [(64)] Standards--Desirable uses (i.e., existing, attainable, designated, or presumed uses as defined in this section [the]) and the narrative and numerical criteria deemed necessary to protect those uses in surface waters.

(66) [(65)] Standards implementation procedures--Methods and protocols in the guidance document *Procedures to Implement the Texas Surface Water Quality Standards* (RG-194), as amended and approved by the commission and EPA.

(67) [(66)] Stormwater--Rainfall runoff, snow melt runoff, surface runoff, and drainage.

(68) [(67)] Stormwater discharge--A point source discharge that is composed entirely of stormwater associated with an industrial activity, a construction activity, a discharge from a municipal separate storm sewer system, or other discharge designated by the agency.

(69) [(68)] Stream order--A classification of stream size, where the smallest, unbranched tributaries of a drainage basin are designated first order streams. Where two first order streams join, a second order stream is formed; where two second order streams join, a third order stream is formed, etc. For purposes of water quality standards

application, stream order is determined from United States Geological Survey topographic maps with a scale of 1:24,000.

(70) [(69)] Surface water in the state--Lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state as defined in the Texas Water Code, §26.001, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all water-courses and bodies of surface water, that are wholly or partially inside or bordering the state or subject to the jurisdiction of the state; except that waters in treatment systems that are authorized by state or federal law, regulation, or permit, and that are created for the purpose of waste treatment are not considered to be water in the state.

(71) [(70)] Sustainable Fisheries--Descriptive of water bodies that potentially have sufficient fish production or fishing activity to create significant long-term human consumption of fish. Sustainable fisheries include perennial streams and rivers with a stream order of three or greater; lakes and reservoirs greater than or equal to 150 acre-feet or 50 surface acres; all bays, estuaries, and tidal rivers. Water bodies that are presumed to have sustainable fisheries include all designated segments listed in Appendix A of §307.10 of this title (relating to Appendices A - G) unless specifically exempted.

(72) [(71)] Thalweg--The deepest portion of a stream or river channel cross-section.

(73) [(72)] Tidal--Descriptive of coastal waters that are subject to the ebb and flow of tides. For purposes of standards applicability, tidal waters are considered to be saltwater. Classified tidal waters include all bays and estuaries with a segment number that begins with 24xx, all streams with the word tidal in the segment name, and the Gulf of Mexico.

(74) [(73)] To discharge--Includes to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.

(75) [(74)] Total dissolved solids--The amount of material (inorganic salts and small amounts of organic material) dissolved in water and commonly expressed as a concentration in terms of milligrams per liter. The term is equivalent to the term filterable residue, as used in 40 Code of Federal Regulations Part 136 and in previous editions of the publication entitled, *Standard Methods for the Examination of Water and Wastewater*.

(76) [(75)] Total maximum daily load (TMDL)--The total amount of a substance that a water body can assimilate and still meet the Texas Surface Water Quality Standards.

(77) [(76)] Total suspended solids--Total suspended matter in water, which is commonly expressed as a concentration in terms of milligrams per liter. The term is equivalent to nonfilterable residue, as used in 40 Code of Federal Regulations Part 136 and in previous editions of the publication entitled, *Standard Methods for the Examination of Water and Wastewater*.

(78) [(77)] Total toxicity--Toxicity as determined by exposing aquatic organisms to samples or dilutions of instream water or treated effluent. Also referred to as whole effluent toxicity or biomonitoring.

(79) [(78)] Toxic equivalency factor [(TEF)]--A factor to describe an order-of-magnitude consensus estimate of the toxicity of a compound relative to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD). The factor is applied to transform various concentrations of dioxins and furans or dioxin-like polychlorinated biphenyls

[(PCBs)] into equivalent concentrations of 2,3,7,8-TCDD, expressed as a toxic equivalency [(TEQ)].

(80) [(79)] Toxic equivalency [(TEQ)]--The sum of the products from the concentration of each dioxin and furan, or dioxin-like polychlorinated biphenyl [PCB] congener, multiplied by its respective toxic equivalency factor [TEF] to give a single 2,3,7,8-tetrachlorodibenzo-p-dioxin [2,3,7,8-TCDD] equivalent.

(81) [(80)] Toxicity--The occurrence of adverse effects to living organisms due to exposure to toxic materials. Adverse effects caused by conditions of temperature and dissolved oxygen are excluded from the definition of toxicity. With respect to the provisions of §307.6(e) of this title (relating to Toxic Materials), which concerns total toxicity and biomonitoring requirements, adverse effects caused by concentrations of dissolved salts (such as sodium, potassium, calcium, chloride, carbonate) in source waters are excluded from the definition of toxicity. Source water is defined as surface water or groundwater that is used as a public water supply or industrial water supply (including a cooling-water supply). Source water does not include brine water that is produced during the extraction of oil and gas, or other sources of brine water that are substantially uncharacteristic of surface waters in the area of discharge. In addition, adverse effects caused by concentrations of dissolved salts that are added to source water by industrial processes are not excluded from the requirements of §307.6(e) of this title, except as specifically noted in §307.6(e)(2)(B) of this title, which concerns requirements for toxicity testing of 100% effluent. This definition of toxicity does not affect the standards for dissolved salts in this chapter other than §307.6(e) of this title. The standards implementation procedures contain provisions to protect surface waters from adverse effects of dissolved salts and methods to address the effects of dissolved salts on total toxicity tests.

(82) [(81)] Toxicity biomonitoring--The process or act of determining total toxicity. Documents that describe procedures for toxicity biomonitoring are cited in §307.6 of this title (relating to Toxic Materials). Also referred to simply as biomonitoring.

(83) [(82)] Water-effect ratio (WER)--The WER is calculated as the toxic concentration ( $LC_{50}$ ) of a substance in water at a particular site, divided by the toxic concentration of that substance as reported in laboratory dilution water. The WER can be used to establish site-specific acute and chronic criteria to protect aquatic life. The site-specific criterion is equal to the WER times the statewide aquatic life criterion in §307.6(c) of this title.

(84) [(83)] Water quality management program--The agency's overall program for attaining and maintaining water quality consistent with state standards, as authorized under the Texas Water Code, the Texas Administrative Code, and the Clean Water Act, §§106, 205(j), 208, 303(e) and 314 (33 United States Code, §§1251 et seq.).

(85) [(84)] Wetland--An area (including a swamp, marsh, bog, prairie pothole, or similar area) having a predominance of hydric soils that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that under normal circumstances supports the growth and regeneration of hydrophytic vegetation. The term "hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation. The term "hydrophytic vegetation" means a plant growing in: water or a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content. The term "wetland" does not include irrigated acreage used as farmland; a man-made wetland of less than one acre; or a man-made wetland where construction or creation commenced on

or after August 28, 1989, and that was not constructed with wetland creation as a stated objective, including but not limited to an impoundment made for the purpose of soil and water conservation that has been approved or requested by soil and water conservation districts. If this definition of wetland conflicts with the federal definition in any manner, the federal definition prevails.

(86) [(85)] Wetland water quality functions--Attributes of wetlands that protect and maintain the quality of water in the state, which include stormwater storage and retention and the moderation of extreme water level fluctuations; shoreline protection against erosion through the dissipation of wave energy and water velocity, and anchoring of sediments; habitat for aquatic life; and removal, transformation, and retention of nutrients and toxic substances.

(87) [(86)] Zone of initial dilution--The small area at the immediate point of a permitted discharge where initial dilution with receiving waters occurs and that may not meet certain criteria applicable to the receiving water. A zone of initial dilution is substantially smaller than a mixing zone.

(b) Abbreviations. The following abbreviations apply to this chapter:

- (1) ALU--aquatic life use.
- (2) AP--aquifer protection.
- (3) AS--agricultural water supply.
- (4) ASTER--Assessment Tools for the Evaluation of Risk.
- (5) BCF--bioconcentration factor.
- (6) CASRN--Chemical Abstracts Service Registry number.
- (7) CFR--Code of Federal Regulations.
- (8) cfs--cubic feet per second.
- (9) Cl-1--chloride.
- (10) CR--county road.
- (11) DO--dissolved oxygen.
- (12) E--exceptional aquatic life use.
- (13) EPA--United States Environmental Protection Agency.
- (14) degrees F--degrees [Degree(s)] Fahrenheit.
- (15) FM--Farm to Market Road.
- (16) ft<sup>3</sup>/s--cubic feet per second.
- (17) H--high aquatic life use.
- (18) HEAST--Health Effects Assessment Summary Tables.
- (19) I--intermediate aquatic life use.
- (20) BWC--International Boundary and Water Commission.
- (21) IH--Interstate Highway.
- (22) [(21)] IRIS--Integrated Risk Information System.
- (23) [(22)] IS--industrial water supply.
- (24) [(23)] km--kilometer.
- (25) [(24)] L--limited aquatic life use.
- (26) [(25)] M--minimal aquatic life use.

- (27) [(26)] m--multiplier.
- (28) [(27)] m/km--meters per kilometer.
- (29) [(28)] MCL--maximum contaminant level (for public drinking water supplies).
- (30) [(29)] MDL--method detection limit.
- (31) [(30)] mg/L--milligrams per liter.
- (32) [(31)] mi--mile.
- (33) [(32)] mL--milliliter.
- (34) [(33)] N--navigation.
- (35) [(34)] NCR--noncontact recreation.
- (36) [(35)] O--oyster waters.
- (37) [(36)] PCR--primary contact recreation.
- (38) [(37)] PS--public water supply.
- (39) [(38)] RfD--reference dose.
- (40) [(39)] RR--ranch road.
- (41) [(40)] 7Q2--seven-day, two-year low-flow.
- (42) [(41)] SCR--secondary contact recreation.
- (43) [(42)] SH--state highway.
- (44) [(43)] SO4-2 --sulfate.
- (45) [(44)] SU--standard units.
- (46) [(45)] TCEQ--Texas Commission on Environmental Quality.
- (47) [(46)] TDS--total dissolved solids.
- (48) [(47)] TEF--toxic equivalency factor.
- (49) [(48)] TMDL--total maximum daily load.
- (50) [(49)] TPDES--Texas Pollutant Discharge Elimination System.
- (51) [(50)] TRE--toxicity reduction evaluation.
- (52) [(51)] TSS--total suspended solids.
- (53) [(52)] US--United States.
- (54) [(53)] USFDA--United States Food and Drug Administration.
- (55) [(54)] USGS--United States Geological Survey.
- (56) [(55)] WER--Water-effect ratio.
- (57) [(56)] WF--waterfowl habitat.
- (58) [(57)] WQM--water quality management.
- (59) [(58)] µg/L--micrograms per liter.
- (60) [(59)] ZID--zone of initial dilution

§307.6. *Toxic Materials.*

(a) Application. The toxic criteria set forth in this section apply to surface water in the state and specifically apply to substances attributed to waste discharges or human activity. With the exception of numeric human health criteria, toxic criteria do not apply to those instances where surface water, solely as a result of natural phenomena, exhibit characteristics beyond the limits established by this section. Standards and procedures set forth in this section are applied in accordance with §307.8 of this title (relating to Application of Stan-

dards) and §307.9 of this title (relating to Determination of Standards Attainment).

(b) General provisions.

(1) Water in the state must not be acutely toxic to aquatic life in accordance with §307.8 of this title.

(2) Water in the state with designated or existing aquatic life uses of limited or greater must not be chronically toxic to aquatic life, in accordance with §307.8 of this title.

(3) Water in the state must be maintained to preclude adverse toxic effects on human health resulting from contact recreation, consumption of aquatic organisms, consumption of drinking water or any combination of the three. Water in the state with sustainable fisheries or public drinking water supply uses must not exceed applicable human health toxic criteria, in accordance with subsection (d) of this section and §307.8 of this title.

(4) Water in the state must be maintained to preclude adverse toxic effects on aquatic life, terrestrial life, livestock, or domestic animals, resulting from contact, consumption of aquatic organisms, consumption of water, or any combination of the three.

(c) Specific numerical aquatic life criteria.

(1) Numerical criteria are established in Table 1 of this paragraph for those specific toxic substances where adequate toxicity information is available and that have the potential for exerting adverse impacts on water in the state.

Figure: 30 TAC §307.6(c)(1)

[Figure: 30 TAC §307.6(e)(1)]

(2) Numerical criteria are based on ambient water quality criteria documents published by the EPA [United States Environmental Protection Agency (EPA)]. EPA guidance criteria have been appropriately recalculated to eliminate the effects of toxicity data for aquatic organisms that are not native to Texas, in accordance with procedures in the EPA guidance documents [document] entitled *Guidelines for Deriving Numerical Site-specific Water Quality Criteria* (EPA 600/3-84-099) and *Revised Deletion Process for the Site-Specific Recalculation Procedure for Aquatic Life Criteria* (EPA-823-R-13-001). [Appendix B of the EPA draft guidance document entitled *Interim Guidance on the Determination and Use of Water-Effect Ratios for Metals* (EPA-823-B-94-001).] Additional EPA guidelines that may be used to establish aquatic life criteria are detailed in the guidance documents.

(3) Specific numerical acute aquatic life criteria are applied as 24-hour averages, and specific numerical chronic aquatic life criteria are applied as seven-day averages.

(4) Ammonia and chlorine toxicity are addressed by total toxicity (biomonitoring) requirements in subsection (e) of this section.

(5) Specific numerical aquatic life criteria for metals and metalloids in Table 1 of paragraph (1) of this subsection apply to dissolved concentrations where noted. Dissolved concentrations can be estimated by filtration of samples prior to analysis, or by converting from total recoverable measurements in accordance with procedures approved by the commission in the standards implementation procedures (RG-194) as amended. Specific numerical aquatic life criteria for non-metallic substances in Table 1 of paragraph (1) of this subsection apply to total recoverable concentrations unless otherwise noted.

(6) Specific numerical acute criteria for toxic substances are applicable to all water in the state except for small zones of initial dilution (ZIDs) at discharge points. Acute criteria may be exceeded within a ZID and below extremely low streamflow conditions (one-fourth of critical low-flow conditions) in accordance with §307.8 of

this title. There must be no lethality to aquatic organisms that move through a ZID, and the sizes of ZIDs are limited in accordance with §307.8 of this title. Specific numerical chronic criteria are applicable to all water in the state with designated or existing aquatic life uses of limited or greater, except inside mixing zones and below critical low-flow conditions, in accordance with §307.8 of this title.

(7) For toxic materials where specific numerical criteria are not listed in Table 1 of paragraph (1) of this subsection, the appropriate criteria for aquatic life protection may be derived in accordance with current EPA guidelines for deriving site-specific water quality criteria. When insufficient data are available to use EPA guidelines, the following provisions are applied in accordance with this section and §307.8 of this title. The  $LC_{50}$  data used in the subsequent calculations are typically obtained from traditional laboratory studies; however, if  $LC_{50}$  data are unavailable or incomplete, other methodologies (such as quantitative structure-activity relationships) may be used:

(A) acute criteria are calculated as 0.3 of the  $LC_{50}$  of the most sensitive aquatic species;  $LC_{50} \times (0.3) =$  acute criteria;

(B) concentrations of nonpersistent toxic materials must not exceed concentrations that are chronically toxic as determined from appropriate chronic toxicity data obtained in accordance with procedures in the EPA guidance document entitled *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Life and Their Uses* (EPA 822-R-85-100) or calculated as 0.1 of acute  $LC_{50}$  values to the most sensitive aquatic species;  $LC_{50} \times (0.1) =$  chronic criteria;

(C) concentrations of persistent toxic materials that do not bioaccumulate shall not exceed concentrations that are chronically toxic as determined from appropriate chronic toxicity data obtained in accordance with procedures in the EPA guidance document entitled *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Life and Their Uses* (EPA 822-R-85-100) or calculated as 0.05 of  $LC_{50}$  values to the most sensitive aquatic species;  $LC_{50} \times (0.05) =$  chronic criteria; and

(D) concentrations of toxic materials that bioaccumulate must not exceed concentrations that are chronically toxic as determined from appropriate chronic toxicity data obtained in accordance with procedures in the EPA guidance document entitled *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Life and Their Uses* (EPA 822-R-85-100) or calculated as 0.01 of  $LC_{50}$  values to the most sensitive aquatic species;  $LC_{50} \times (0.01) =$  chronic criteria.

(8) For toxic substances where the relationship of toxicity is defined as a function of pH or hardness, numerical criteria are presented as an equation based on this relationship. Site-specific values for each segment are given in the standards implementation procedures (RG-194) as amended.

(9) Criteria for most metals are multiplied by a water-effect ratio (WER) in order to incorporate the effects of local water chemistry on toxicity. The WER is assumed to be equal to one except where sufficient site-specific data are available to determine the WER for a particular water body or portion of a water body. A WER is only applicable to those portions of a water body that are adequately addressed by site-specific data. WERs that have been determined for particular water bodies are listed in Appendix E of §307.10 of this title (relating to Appendices A - G) when standards are revised. A site-specific WER that affects an effluent limitation in a wastewater discharge permit, and that has not been incorporated into Appendix E of §307.10 of this title, must be noted in a public notice during the permit application process. An opportunity for public comment must be provided, and the WER may be considered in any public hearing on the permit application.



(10) Freshwater copper aquatic-life criteria include a multiplier (m) to incorporate effects of local water chemistry on toxicity. This multiplier may be based on either a WER or a biotic ligand model. The multiplier is assumed to be equal to one except where sufficient site-specific data are available to determine the multiplier for a particular water body or portion of a water body. The multiplier is only applicable to those portions of a water body that are adequately addressed by site-specific data. As multipliers are determined for particular water bodies they are listed in Appendix E of §307.10 of this title when standards are revised. A site-specific multiplier that affects an effluent limitation in a wastewater discharge permit, and that has not been incorporated into Appendix E of §307.10 of this title, is noted in a public notice during the permit application process. An opportunity for public comment must be provided, and the multiplier may be considered in any public hearing on the permit application.

(11) Additional site-specific factors may indicate that the numerical criteria listed in Table 1 of paragraph (1) of this subsection are inappropriate for a particular water body. These factors are applied as a site-specific standards modification in accordance with §307.2(d) of this title (relating to Description of Standards). The application of a site-specific standard must not impair an existing, attainable, or designated use. Factors that may justify a temporary variance or site-specific standards amendment include the following:

- (A) background concentrations of specific toxics of concern in receiving waters, sediment, or indigenous biota;
  - (B) persistence and degradation rate of specific toxic materials;
  - (C) synergistic, additive, or antagonistic interactions of toxic substances with other toxic or nontoxic materials;
  - (D) measurements of total effluent toxicity;
  - (E) indigenous aquatic organisms, which may have different responses to particular toxic materials;
  - (F) technological or economic limits of treatability for specific toxic materials;
  - (G) bioavailability of specific toxic substances of concern, as determined by WER tests or other analyses approved by the commission; and
  - (H) new information concerning the toxicity of a particular substance.
- (d) Specific numerical human health criteria.

(1) Numerical human health criteria are established in Table 2 of this paragraph.

Figure: 30 TAC §307.6(d)(1)

[Figure: 30 TAC §307.6(d)(1)]

(2) Categories of human health criteria:

(A) concentration criteria to prevent contamination of drinking water, fish, and other aquatic life to ensure that they are safe for human consumption. These criteria apply to surface waters that are designated or used for public drinking water supplies, including all water bodies identified as having a public drinking water supply use in Appendix A of §307.10 of this title [this chapter] or as a sole-source surface drinking water supply in Appendix B of §307.10 of this title [this chapter]. (Column A in Table 2 of paragraph (1) of this subsection);

(B) concentration criteria to prevent contamination of fish and other aquatic life to ensure that they are safe for human consumption. These criteria apply to surface waters that have sustainable

fisheries and that are not designated or used for public water supply or as a sole-source surface drinking water supply (Column B in Table 2 of paragraph (1) of this subsection);

(3) Specific assumptions and procedures (except where noted in Table 2 of paragraph (1) of this subsection).

(A) Sources for the toxicity factors to calculate criteria were derived from EPA's Integrated Risk Information System (IRIS); EPA's *National Recommended Water Quality Criteria: 2002, Human Health Criteria Calculation Matrix* (EPA-822-R-02-012); EPA inputs for calculating the 2015 updated national recommended human health criteria; EPA Health Effects Assessment Summary Tables (HEAST); Assessment Tools for the Evaluation of Risk (ASTER); EPA's QSAR Toxicity Estimation Software Tool, version 4.1; and the computer program, CLOGP3.

(B) For known or suspected carcinogens (as identified in EPA's IRIS database), an incremental cancer risk level of 10<sup>-5</sup> (1 in 100,000) was used to derive criteria. An RfD (reference dose) was determined for carcinogens [noncarcinogens] and noncarcinogens [for carcinogens] where the EPA has not derived cancer slope factors.

(C) Consumption rates of fish and shellfish were estimated as 17.5 grams per person per day, unless otherwise specified in Table 2 of paragraph (1) of this subsection.

(D) Drinking water consumption rates were estimated as 2.0 liters per person per day.

(E) For carcinogens, a body-weight scaling factor of 3/4 power was used to convert data on laboratory test animals to human scale. Reported weights of laboratory test animals are used, and an average weight of 70 kilograms is assumed for humans.

(F) Childhood exposure was considered for all noncarcinogens. Consumption rates for fish and shellfish were estimated as 5.6 grams per child per day, and drinking water consumption rates were estimated as 0.64 liters per child per day. A child body weight was estimated at 15 kilograms. Both the water consumption rate and body weight are age-adjusted for a six-year-old child. The consumption rate for fish and shellfish for children is from Table 10-61 of EPA's 1997 *Exposure Factors Handbook* (EPA/600/P-95/002Fa-c).

(G) Numerical human health criteria were derived in accordance with the general procedures and calculations in the EPA guidance documents entitled *Technical Support Document for Water Quality-based Toxics Control* (EPA/505/2-90-001); *Guidance Manual for Assessing Human Health Risks from Chemically Contaminated Fish and Shellfish* (EPA/503/8-89-002); and *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health* (2000) (EPA-822-B-00-004).

(H) If a calculated criterion to prevent contamination of drinking water and fish to ensure they are safe for human consumption (Column A in Table 2 of paragraph (1) of this subsection) was greater than the applicable maximum contaminant level (MCL) in Chapter 290 of this title (relating to Public Drinking Water), then the MCL was used as the criterion.

(I) If the concentration of a substance in fish tissue used for these calculations was greater than the applicable United States Food and Drug Administration Action Level for edible fish and shellfish tissue, then the acceptable concentration in fish tissue was lowered to the Action Level for calculation of criteria.

(4) Human health criteria for additional toxic materials are adopted by the commission as appropriate.

(5) Specific human health concentration criteria for water are applicable to water in the state that has sustainable fisheries or designation or use as a public drinking water supply or as a sole-source drinking water supply except within mixing zones and below stream flow conditions as specified in §307.8 of this title. The following waters are considered to have sustainable fisheries:

(A) all designated segments listed in Appendix A of §307.10 of this title, unless specifically exempted;

(B) perennial streams and rivers with a stream order of three or greater, as defined in §307.3 of this title (relating to Definitions and Abbreviations);

(C) lakes and reservoirs greater than or equal to 150 acre-feet or 50 surface acres;

(D) all bays, estuaries, and tidal rivers; and

(E) any other waters that potentially have sufficient fish production or fishing activity to create significant long-term human consumption of fish.

(6) Waters that are not considered to have a sustainable fishery, but that have an aquatic life use of limited or greater, are considered to have an incidental fishery. Consumption rates assumed for incidental fishery waters are 1.75 grams per person per day. Therefore, numerical criteria applicable to incidental fishery waters are ten times the criteria listed in Column B in [redacted] Table 2 of paragraph (1) of this subsection.

(7) Specific human health criteria are applied as long term average exposure criteria designed to protect populations over a life time. Attainment measures for human health are addressed in §307.9 of this title.

(8) For toxic materials of concern where specific human health criteria are not listed in Table 2 of paragraph (1) of this subsection, the following provisions apply:

(A) For known or suspected carcinogens (as identified in EPA's IRIS database), a cancer risk of 10-5 (1 in 100,000) is applied to the most recent numerical criteria adopted by the EPA and published in the *Federal Register*. If an MCL or equivalent agency guideline for protection of drinking water sources is less than the resulting criterion, then the MCL applies to public drinking water supplies in accordance with paragraph (3)(H) of this subsection.

(B) For toxic materials not defined as carcinogens, the most recent numerical criteria adopted by the EPA and published in the *Federal Register* are applicable. If an MCL or equivalent agency guideline for protection of drinking water sources is less than the resulting criterion, then the MCL applies to public drinking water supplies in accordance with paragraph (3)(H) of this subsection.

(C) In the absence of available criteria, numerical criteria may be derived from technically valid information and calculated in accordance with the provisions of paragraph (3) of this subsection.

(9) Numerical criteria for bioconcentratable pollutants are derived in accordance with the general procedures in the EPA guidance document entitled *Assessment and Control of Bioconcentratable Contaminants in Surface Water* (March 1991). The commission may develop discharge permit limits in accordance with the provisions of this section.

(10) Numerical human health criteria are expressed as total recoverable concentrations for nonmetals and selenium and as dissolved concentrations for other metals and metalloids.

(11) Additional site-specific factors may indicate that the numerical human health criteria listed in Table 2 of paragraph (1) of this subsection are inappropriate for a particular water body. These factors are applied as a site-specific standards modification in accordance with §307.2(d) of this title. The application of site-specific criteria must not impair an existing, attainable, presumed, or designated use or affect human health. Factors that may justify a temporary variance or site-specific standards amendment include the following:

(A) background concentrations of specific toxics of concern in receiving waters, sediment, or indigenous biota;

(B) persistence and degradation rate of specific toxic materials;

(C) synergistic or antagonistic interactions of toxic substances with other toxic or nontoxic materials;

(D) technological or economic limits of treatability for specific toxic materials;

(E) bioavailability of specific toxic substances of concern;

(F) local water chemistry and other site-specific conditions that may alter the bioconcentration, bioaccumulation, or toxicity of specific toxic substances;

(G) site-specific differences in the bioaccumulation responses of indigenous, edible aquatic organisms to specific toxic materials;

(H) local differences in consumption patterns of fish and shellfish or drinking water, but only if any changes in assumed consumption rates are protective of the local population that frequently consumes fish, shellfish, or drinking water from a particular water body; and

(I) new information concerning the toxicity of a particular substance.

(e) Total toxicity.

(1) Total (whole-effluent) toxicity of permitted discharges, as determined from biomonitoring of effluent samples at appropriate dilutions, must be sufficiently controlled to preclude acute total toxicity in all water in the state with the exception of small ZIDs at discharge points and at extremely low streamflow conditions (one-fourth of critical low-flow conditions) in accordance with §307.8 of this title. Acute total toxicity levels may be exceeded in a ZID, but there must be no significant lethality to aquatic organisms that move through a ZID, and the sizes of ZIDs are limited in accordance with §307.8 of this title. Chronic total toxicity, as determined from biomonitoring of effluent samples at appropriate dilutions, must be sufficiently controlled to preclude chronic toxicity in all water in the state with an existing or designated aquatic life use of limited or greater except in mixing zones at discharge points and at flows less than critical low-flows, in accordance with §307.8 of this title. Chronic toxicity levels may be exceeded in a mixing zone, but there must be no significant sublethal toxicity to aquatic organisms that move through the mixing zone.

(2) General provisions for controlling total toxicity.

(A) Dischargers whose effluent has a significant potential for exerting toxicity in receiving waters as described in the *Procedures to Implement the Texas Surface Water Quality Standards* (RG-194) as amended are required to conduct whole effluent toxicity biomonitoring at appropriate dilutions.

(B) In addition to the other requirements of this section, the effluent of discharges to water in the state must not be acutely toxic

to sensitive species of aquatic life, as demonstrated by effluent toxicity tests. Toxicity testing for this purpose is conducted on samples of 100% effluent, and the criterion for acute toxicity is mortality of 50% or more of the test organisms after 24 hours of exposure. This provision does not apply to mortality that is a result of an excess, deficiency, or imbalance of dissolved inorganic salts (such as sodium, calcium, potassium, chloride, or carbonate) that are in the effluent and are not listed in Table 1 of [in] subsection (c)(1) of this section or that are in source waters.

(C) The latest revisions of the following EPA publications provide methods for appropriate biomonitoring procedures: *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms*, *Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms*, *Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms*, and *the Technical Support Document for Water Quality-based Toxics Control*. The use of other procedures approved by the agency and the EPA is also acceptable. Toxicity tests must be conducted using representative, sensitive aquatic organisms as approved by the agency, and any such testing must adequately determine if toxicity standards are being attained.

(D) If toxicity biomonitoring results indicate that a discharge is not sufficiently controlled to preclude acute or chronic toxicity as described in this subsection, then the permittee will be required to eliminate sources of toxicity and may be required to conduct a toxicity reduction evaluation (TRE) in accordance with the permitting procedures of the commission. In accordance with the standards implementation procedures (RG-194), permits are amended to include appropriate provisions to eliminate toxicity. Such provisions may include total toxicity limits, chemical-specific limits, best management practices, or other actions (such as moving a discharge location) designed to reduce or eliminate toxicity. Where sufficient to attain and maintain applicable numeric and narrative state water quality standards, a chemical-specific limit, best management practices, or other actions designed to reduce or eliminate toxicity rather than a total toxicity limit may be established in the permit. Where conditions may be necessary to prevent or reduce effluent toxicity, permits must include a reasonable schedule for achieving compliance with such additional conditions.

(E) Discharge permit limits based on total toxicity may be established in consideration of site-specific factors, but the application of such factors must not result in impairment of an existing, attainable, presumed, or designated use. These factors are applied as a site-specific standards modification in accordance with §307.2(d) of this title. A demonstration that uses are protected may consist of additional effluent toxicity testing, instream monitoring requirements, or other necessary information as determined by the agency. Factors that may justify a temporary variance or site-specific standards amendment include the following:

- (i) background toxicity of receiving waters;
- (ii) persistence and degradation rate of principal toxic materials that are contributing to the total toxicity of the discharge;
- (iii) site-specific variables that may alter the impact of toxicity in the discharge;
- (iv) indigenous aquatic organisms, that may have different levels of sensitivity than the species used for total toxicity testing; and
- (v) technological, economic, or legal limits of treatability or control for specific toxic material.

#### §307.7. Site-Specific Uses and Criteria.

(a) Uses and numerical criteria are established on a site-specific basis in Appendices A, B, D, E, F, and G of §307.10 of this title (relating to Appendices A - G). Site-specific uses and numerical criteria may also be applied to unclassified waters in accordance with §307.4 of this title (relating to General Criteria) and §307.5(c) of this title (relating to Antidegradation). Site-specific criteria apply specifically to substances attributed to waste discharges or human activity. Site-specific criteria do not apply to those instances when surface waters exceed criteria due to natural phenomena. The application of site-specific uses and criteria is described in §307.8 of this title (relating to the Application of Standards) and §307.9 of this title (relating to the Determination of Standards Attainment).

(b) Appropriate uses and criteria for site-specific standards are defined as follows.

(1) Recreation. Recreational use consists of five categories--primary contact recreation 1, primary contact recreation 2, secondary contact recreation 1, secondary contact recreation 2, and noncontact recreation waters. Classified segments are designated for primary contact recreation 1 unless sufficient site-specific information demonstrates that elevated concentrations of indicator bacteria frequently occur due to sources of pollution that cannot be reasonably controlled by existing regulations, wildlife sources of bacteria are unavoidably high and there is limited aquatic recreational potential, or primary or secondary contact recreation is considered unsafe for other reasons such as ship or barge traffic. In a classified segment where contact recreation is considered unsafe for reasons unrelated to water quality, a designated use of noncontact recreation may be assigned either noncontact recreation criteria or criteria normally associated with primary contact recreation. A designation of primary or secondary contact recreation is not a guarantee that the water so designated is completely free of disease-causing organisms. Indicator bacteria, although not generally pathogenic, are indicative of potential contamination by feces of warm blooded animals. Recreational criteria are based on these indicator bacteria rather than direct measurements of pathogens. Criteria are expressed as the number of bacteria per 100 [milliliters] mL of water (in terms of colony forming units, most probable number, or other applicable reporting measures). Even where the concentration of indicator bacteria is less than the criteria for primary or secondary contact recreation, there is still some risk of contracting waterborne diseases. Additional guidelines on minimum data requirements and procedures for evaluating standards attainment are specified in the *TCEQ Guidance for Assessing and Reporting Surface Water Quality in Texas*, as amended.

#### (A) Freshwater.

(i) Primary contact recreation 1. The geometric mean criterion for *E. coli* is 126 per 100 mL. In addition, the single sample criterion for *E. coli* is 399 per 100 mL.

(ii) Primary contact recreation 2. The geometric mean criterion for *E. coli* is 206 per 100 mL.

(iii) Secondary contact recreation 1. The geometric mean criterion for *E. coli* is 630 per 100 mL.

(iv) Secondary contact recreation 2. The geometric mean criterion for *E. coli* is 1,030 per 100 mL.

(v) Noncontact recreation. The geometric mean criterion for *E. coli* is 2,060 per 100 mL.

(vi) For high saline inland water bodies where Enterococci is the designated recreational indicator in Appendix A of §307.10 of this title, Enterococci is the applicable recreational indicator for instream bacteria sampling at all times for the classified water body and for the unclassified water bodies that are within the watershed

of that classified segment, unless it is demonstrated that an unclassified water body is not high saline. E. coli is the applicable recreational indicator for instream bacteria sampling at all times for unclassified water bodies where conductivity values indicate that the water bodies are not high saline. For high saline inland waters with primary contact recreation 1, the geometric mean criterion for Enterococci is 33 per 100 mL and the single sample criterion is 78 per 100 mL. For high saline inland waters with secondary contact recreation 1, the geometric mean criterion for Enterococci is 165 per 100 mL. For high saline inland waters with secondary contact recreation 2, the geometric mean criterion for Enterococci is 270 per 100 mL. For high saline inland water bodies with noncontact recreation, the geometric mean criterion for Enterococci is 540 per 100 mL.

(B) Saltwater.

(i) Primary contact recreation 1. The geometric mean criterion for Enterococci is 35 per 100 mL. In addition, the single sample criterion for Enterococci is 130 [404] per 100 mL.

(ii) Secondary contact recreation 1. A secondary contact recreation 1 use for tidal streams and rivers can be established on a site-specific basis in §307.10 of this title if justified by a use-attainability analysis and the water body is not a coastal recreation water as defined in the Beaches Environmental Assessment and Coastal Health Act of 2000 (BEACH Act). The geometric mean criterion for Enterococci is 175 per 100 mL.

(iii) Noncontact recreation. A noncontact recreation use for tidal streams and rivers can be established on a site-specific basis in §307.10 of this title if justified by a use-attainability analysis and the water body is not a coastal recreation water, as defined in §307.3 of this title (relating to Definitions and Abbreviations) [as defined in the BEACH Act]. The geometric mean criterion for Enterococci is 350 per 100 mL.

(C) Swimming advisory programs. For areas where local jurisdictions or private property owners voluntarily provide public notice or closure based on water quality, the use of any single-sample or short-term indicators of recreational suitability are selected at the discretion of the local managers of aquatic recreation. Guidance for single-sample bacterial indicators is available in the EPA documents entitled *Recreational Water Quality Criteria* (EPA-820-F-12-058) and *Ambient Water Quality Criteria for Bacteria - 1986* (EPA 440/5-84-002). [Guidance for single-sample bacterial indicators is available in the United States Environmental Protection Agency (EPA) document entitled *Ambient Water Quality Criteria for Bacteria - 1986*.] Other short-term indicators to assess water quality suitability for recreation - such as measures of streamflow, turbidity, or rainfall - may also be appropriate.

(2) Domestic water supply.

(A) Use categories. Domestic water supply consists of three use subcategories - public water supply, sole-source surface drinking water supply, and aquifer protection.

(i) Public water supply. Segments designated for public water supply are those known to be used or exhibit characteristics that would allow them to be used as the supply source for public water systems as defined by Chapter 290 of this title (relating to Public Drinking Water).

(ii) Sole-source surface drinking water supplies and their protection zones. Water bodies that are sole-source surface drinking water supplies are listed in Appendix B of §307.10 of this title. Sole-source surface drinking water supplies and their protection zones are addressed in Chapter 321, Subchapter B of this title (relating to [Subchapter B:] Concentrated Animal Feeding Operations).

(iii) Aquifer protection. Segments designated for aquifer protection are capable of recharging the Edwards Aquifer. The principal purpose of this use designation is to protect the quality of water infiltrating into and recharging the aquifer. The designation for aquifer protection applies only to those portions of the segments so designated that are on the recharge zone, transition zone, or contributing zone as defined in Chapter 213 of this title (relating to the Edwards Aquifer). Chapter 213 of this title establishes provisions for activities in the watersheds of segments that are designated for aquifer protection.

(B) Use criteria. The following use criteria apply to all domestic water supply use subcategories.

(i) Radioactivity associated with dissolved minerals in the freshwater portions of river basin and coastal basin waters should not exceed levels established by drinking water standards as specified in Chapter 290 of this title unless the conditions are of natural origin.

(ii) Surface waters utilized for domestic water supply must not exceed toxic material concentrations that prevent them from being treated by conventional surface water treatment to meet drinking water standards as specified in Chapter 290 of this title.

(iii) Chemical and microbiological quality of surface waters used for domestic water supply should conform to drinking water standards as specified in Chapter 290 of this title.

(3) Aquatic life. The establishment of numerical criteria for aquatic life is highly dependent on desired use, sensitivities of aquatic communities, and local physical and chemical characteristics. Six subcategories of aquatic life use are established. They include minimal, limited, intermediate, high, and exceptional aquatic life and oyster waters. Aquatic life use subcategories designated for segments listed in Appendix A of §307.10 of this title recognize the natural variability of aquatic community requirements and local environmental conditions.

(A) Dissolved oxygen.

(i) The characteristics and associated dissolved oxygen criteria for limited, intermediate, high, and exceptional aquatic life use subcategories are indicated in Table 3 of this clause. This table also includes dissolved oxygen criteria for a minimal aquatic life use subcategory that applies to intermittent streams without perennial pools as indicated in §307.4(h)(4) of this title.

Figure: 30 TAC §307.7(b)(3)(A)(i)  
[Figure: 30 TAC §307.7(b)(3)(A)(i)]

(ii) Critical low-flow values associated with the bed-slopes and dissolved oxygen criteria in Table 4 of this clause apply to streams that have limited, intermediate, high, or exceptional aquatic life uses and to streams that are specifically listed in Appendix A or D of §307.10 of this title. The critical low-flow values in Table 4 of this clause apply to streams in Texas that are east of a line defined by Interstate Highways 35 and 35W from the Red River to the community of Moore in Frio County, and by US [United States] Highway 57 from the community of Moore to the Rio Grande. Table 4 of this clause does not apply where specifically superseded by the equation that is listed in footnote 3 in the Cypress Creek Basin in Appendix A and in footnote 2 in Appendix D of §307.10 of this title. The critical low-flow values in Table 4 of this clause (at the appropriate stream bed-slope) are utilized as headwater flows when the flows are larger than applicable seven-day, two-year low-flows in order to determine discharge effluent limits necessary to achieve dissolved oxygen criteria. For streams that have bed-slopes less than the minimum bed-slopes in Table 4 of this clause, the flows listed for the minimum bed-slope of 0.1 meters per kilometer (m/km) are applicable. For streams that have bed-slopes

greater than the maximum bedslope in Table 4 of this clause, the flows listed for the maximum bedslope of 2.4 m/km are applicable. The required effluent limits are those necessary to achieve each level of dissolved oxygen (as defined in Table 3 of clause (i) of this subparagraph, Table 3]) at or below an assigned, designated, or presumed aquatic life use. Presumed aquatic life uses must be in accordance with those required by §307.4(h) of this title. The critical low-flow values in Table 4 of this clause do not apply to tidal streams.

Figure: 30 TAC §307.7(b)(3)(A)(ii)  
[Figure: 30 TAC §307.7(b)(3)(A)(ii)]

(iii) The critical low-flow values in Table 4 of clause (ii) of this subparagraph for limited, intermediate, high, and exceptional aquatic life uses are based upon data from the commission's least impacted stream study (Texas Aquatic Ecoregion Project). Results of this study indicate a strong dependent relationship for average summertime background dissolved oxygen concentrations and several hydrologic and physical stream characteristics - particularly bedslope (stream gradient) and stream flow. The critical low-flow values in Table 4 of clause (ii) of this subparagraph are derived from a multiple regression equation for the eastern portion of Texas as defined in clause (ii) of this subparagraph. Further explanation of the development of the regression equation and its application are contained in the standards implementation procedures as amended.

(iv) The critical low-flow values in Table 4 of clause (ii) of this subparagraph may be adjusted based on site-specific data relating dissolved oxygen concentrations to factors such as flow, temperature, or hydraulic conditions in accordance with the standards implementation procedures as amended. Site-specific, critical low-flow values require approval by the commission. The EPA must review any site-specific, critical low-flow values that could affect permits or other regulatory actions that are subject to approval by EPA. Critical low-flow values that have been determined for particular streams are listed in the standards implementation procedures

(B) Oyster waters.

(i) A 1,000 foot buffer zone, measured from the shoreline at ordinary high tide, is established for all bay and gulf waters except those contained in river or coastal basins as defined in §307.2 of this title (relating to Description of Standards). Recreational criteria for indicator bacteria, as specified in §307.7(b)(1) of this title (relating to Site-Specific Uses and Criteria), are applicable within buffer zones.

(ii) The criteria for median fecal coliform concentration in bay and gulf waters, exclusive of buffer zones, are 14 colonies per 100 mL with not more than 10% of all samples exceeding 43 colonies per 100 mL.

(iii) Oyster waters should be maintained so that concentrations of toxic materials do not cause edible species of clams, oysters, and mussels to exceed accepted guidelines for the protection of public health. Guidelines are provided by the United States Food and Drug Administration Action Levels for molluscan shellfish, but additional information related to human health protection may also be considered in determining acceptable toxic concentrations.

(4) Additional criteria.

(A) Chemical parameters. Site-specific criteria for chloride, sulfate, and total dissolved solids are established as averages over an annual period for either a single sampling point or multiple sampling points.

(B) pH. Site-specific numerical criteria for pH are established as absolute minima and maxima.

(C) Temperature. Site-specific temperature criteria are established as absolute maxima.

(D) Toxic materials. Criteria for toxic materials are established in §307.6 of this title (relating to Toxic Materials).

(E) Nutrient criteria. Numeric and narrative criteria to preclude excessive growth of aquatic vegetation are intended to protect multiple uses such as primary, secondary, and noncontact recreation, aquatic life, and public water supplies. Nutrient numeric criteria for specific reservoirs, expressed as concentrations of chlorophyll *a* in water, are listed in Appendix F of §307.10 of this title.

(5) Additional uses. Other basic uses, such as navigation, agricultural water supply, industrial water supply, seagrass propagation, and wetland water quality functions must be maintained and protected for all water in the state where these uses can be achieved.

§307.9. *Determination of Standards Attainment.*

(a) General standards attainment sampling and assessment procedures. The procedures listed in this section are solely for the purposes of assessing water quality monitoring data to determine if water quality standards are attained in individual water bodies. Unless otherwise stated in this chapter, additional details concerning sampling procedures for the measurement, collection, preservation and laboratory analysis of water quality samples are provided in the Texas Commission on Environmental Quality (TCEQ) *Surface Water Quality Monitoring Procedures, Volume 1: Physical and Chemical Monitoring Methods (RG-415)* as amended, the most recently published edition of the book entitled *Standard Methods for the Examination of Water and Wastewater*, 40 Code of Federal Regulations (CFR) Part 136, or other reliable sources acceptable to the commission. Laboratory accreditation requirements are specified in Chapter 25 of this title (relating to Environmental Testing Laboratory Accreditation and Certification). Unless otherwise stated in this chapter, additional details concerning how sampling data are evaluated to assess standards compliance are provided in the TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended.

(b) Samples to determine standards attainment are collected at locations approved by the commission. Samples collected at non-approved locations may be accepted at the discretion of the commission. Samples to determine standards attainment in ambient water must be representative in terms of location, seasonal variations, and hydrologic conditions. Locations must be typical of significant areas of a water body. Temporal sampling must be sufficient to appropriately address seasonal variations of concern. Sample results that are used to assess standards attainment must not include samples that are collected during extreme hydrologic conditions such as high-flows and flooding immediately after heavy rains. Further guidance on representative sampling, both spatially, temporally, and hydrologically, can be found in the TCEQ *Surface Water Quality Monitoring Procedures, Volume 1: Physical and Chemical Monitoring Methods (RG-415)*, *Surface Water Quality Monitoring Procedures, Volume 2: Methods for Collecting and Analyzing Biological Assemblage and Habitat (RG-416)*, and the TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended.

(c) Collection and preservation of water samples.

(1) For the purposes of assessing standards attainment, samples are collected and preserved in accordance with procedures set forth in the most recently published edition of the book entitled *Standard Methods for the Examination of Water and Wastewater*, the TCEQ *Surface Water Quality Monitoring Procedures, Volume 1: Physical and Chemical Monitoring Methods (RG-415)* as amended, 40 CFR Part 136, or other reliable procedures acceptable to the commission.

(2) Bacterial and temperature determinations must be conducted on samples or measurements taken at or near the surface in accordance with the TCEQ *Surface Water Quality Monitoring Procedures, Volume 1: Physical and Chemical Monitoring Methods* (RG-415) as amended. Depth collection procedures for chloride, sulfate, total dissolved solids, dissolved oxygen, chlorophyll *a*, and pH to determine standards attainment may vary depending on the water body being sampled. Standards for chloride, sulfate, total dissolved solids, dissolved oxygen, chlorophyll *a*, pH are applicable to the mixed surface layer, but a single sample taken near the surface normally provides an adequate representation of these parameters. When the water column is entirely mixed according to determinations described in TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended, standards may apply to any sample taken in the water column for parameters indicated in this section.

(3) For toxic materials, numerical aquatic life criteria are applicable to water samples collected at any depth. Numerical human health criteria are applicable to the average (arithmetic) concentration from the surface to the bottom. For the purposes of standards attainment for aquatic life protection and human health protection, samples that are collected at approximately one foot below the water surface are acceptable for assessing standards attainment of numerical criteria.

(d) Sample analysis.

(1) Numerical criteria. Procedures for laboratory analysis must be in accordance with the most recently published edition of the book entitled *Standard Methods for the Examination of Water and Wastewater*; the TCEQ [Texas] *Surface Water Quality Monitoring Procedures, Volume 1: Physical and Chemical Monitoring Methods* (RG-415) as amended, 40 CFR Part 136, or other reliable procedures acceptable to the commission, and in accordance with Chapter 25 of this title.

(2) Radioactivity. Measurements must be made on filtered samples to determine radioactivity associated with dissolved minerals in accordance with current analytical methodology approved by the EPA [United States Environmental Protection Agency (EPA)].

(3) Toxicity. Bioassay techniques must be selected as testing situations dictate but are generally conducted using representative sensitive organisms in accordance with §307.6 of this title (relating to Toxic Materials).

(e) Sampling periodicity and evaluation.

(1) Chloride, sulfate, total dissolved solids. Standards attainment determinations to demonstrate compliance with the annual average may be based on the long term mean in accordance with TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended. Results from all monitoring stations within the segment are used to allow for reasonable parametric gradients. Total dissolved solids determinations may be based on measurements of specific conductance.

(2) Radioactivity. The impact of radioactive sources on surface waters must be evaluated in accordance with Chapter 336 of this title (relating to Radioactive Substance Rules), and in accordance with Chapter 290 of this title (relating to Public Drinking Water).

(3) Bacteria. [Standards attainment must be based on a long-term geometric mean of applicable samples in accordance with TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended, and data are evaluated in accordance with the provisions of §307.7(b)(1) of this title (relating to Site-Specific Uses and Criteria). Determination of attainment may account for statistical variability to reduce uncertainty in evaluations in accordance with TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas*

as amended. Samples may be evaluated with the single sample maximum criterion for purposes of swimmer safety notification programs and wastewater permit compliance.]

(A) For coastal recreation waters, as defined in §307.3 of this title (relating to Definitions and Abbreviations), standards attainment must be based on a geometric mean and a single sample maximum. Data are evaluated in accordance with §307.7(b)(1) of this title (relating to Site-Specific Uses and Criteria).

(B) For inland waters (tidal rivers, high saline inland waters, and freshwater), and other non-coastal recreation waters, standards attainment must be based on a long-term geometric mean of applicable samples in accordance with the TCEQ's *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended. Data are evaluated in accordance with §307.7(b)(1) of this title.

(C) Samples may be evaluated with the single sample maximum criterion for the purposes of swimmer safety notification programs and wastewater permit compliance.

(D) Determination of attainment may account for statistical variability to reduce uncertainty in evaluations in accordance with the TCEQ's *Guidance for Assessing and Reporting Surface Water Quality in Texas*.

(4) Toxic materials. Standards attainment must be evaluated in accordance with §307.6 of this title, and in accordance with §307.8 of this title (relating to Application of Standards). To protect aquatic life, specific numerical acute toxic criteria are applied as 24-hour averages, and specific numerical chronic toxic criteria are applied as seven-day averages. Human health criteria are applied as long-term average exposure criteria designed to protect populations over a life time. Standards attainment for acute and chronic toxic criteria for aquatic life and human health criteria must be in accordance with the TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended. Standards attainment for human health criteria must be based on the mean of samples collected in accordance with the TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended.

(5) Temperature and pH. Standards attainment must be in accordance with the TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended.

(6) Dissolved oxygen.

(A) Criteria for daily (24-hour) average concentrations must be compared to a time-weighted average of measurements taken over a 24-hour period in accordance with TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended.

(B) Criteria for minimum concentrations must be compared to individual measurements in accordance with TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended. When data are collected over a 24-hour period, the lowest measurement observed during that 24-hour period is compared to the applicable minimum criterion.

(7) Assessment of chlorophyll *a* criteria in reservoirs. Procedures to determine standards attainment for chlorophyll *a* criteria in reservoirs must be in accordance with the TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended, including the evaluation of multiple uses as indicated in §307.7(b)(4) of this title. Chlorophyll *a* criteria in individual reservoirs are found in Appendix F of §307.10 of this title (relating to Appendices A - G). The data for the assessment must be collected at the sampling stations used for calculating the criteria, as listed in Appendix F of §307.10 of this title, or from comparable stations in the main pool of the reservoir. As-

assessment values indicated in the TCEQ Guidance for Assessing and Reporting Surface Water Quality in Texas are to be used for assessment purposes only and are not to be used as water quality-based effluent limits in wastewater discharge permits for wastewater permitting. [Chlorophyll *a* in reservoirs: Standards attainment must be based on the long term median of chlorophyll *a* measurements in accordance with TCEQ Guidance for Assessing and Reporting Surface Water Quality in Texas as amended. Medians are compared to the chlorophyll *a* criteria for individual reservoirs in Appendix F of §307.10 of this title (relating to Appendices A - G): The data for the assessment must be collected at the sampling stations used for calculating the criteria, as listed in Appendix F of §307.10 of this title, or from comparable stations in the main pool of the reservoir.]

(8) Site-specific criteria for aquatic recreation (geometric mean), total dissolved solids, chloride, and sulfate as established in Appendix A of §307.10 of this title, and human health criteria as established in Table 2 of §307.6(d)(1) of this title do not apply in the following stream types and flow conditions:

(A) perennial streams when flows are below 0.1 cubic feet per second;

(B) intermittent streams when less than 20% of the stream bed of a 500 meter sampling reach is covered by pools; or when extremely dry conditions are indicated by comparable observations of flow severity.

(f) Biological integrity. Biological integrity, which is an essential component of the aquatic life categories defined in §307.7(b)(3) of this title [(relating to Site-Specific Uses and Criteria)], is assessed by sampling the aquatic community. Attainment of biological integrity is assessed by indices of biotic integrity that are described in the TCEQ Surface Water Quality Monitoring Procedures, Volume 2: Methods for Collecting and Analyzing Biological Assemblage and Habitat Data (RG-416) as amended. Determination of attainment may account for statistical variability to reduce uncertainty in evaluations in accordance with TCEQ Guidance for Assessing and Reporting Surface Water Quality in Texas as amended. Primary criteria associated with assessing the attainment of aquatic life uses are indices of biotic integrity and criteria for dissolved oxygen. When the appropriate aquatic life use as determined by the use-attainability study is less stringent than the presumed high use, then the appropriate aquatic life use and dissolved oxygen criteria are listed in Appendix D of §307.10 of this title after approval by EPA.

(g) Additional parameters. Assessment of narrative criteria parameters must be performed in accordance with the TCEQ Guidance for Assessing and Reporting Surface Water Quality in Texas as amended.

#### §307.10. *Appendices A - G.*

The following appendices are integral components of this chapter of the Texas Surface Water Quality Standards.

(1) Appendix A - Site-specific Uses and Criteria for Classified Segments:

Figure: 30 TAC §307.10(1)

[Figure: 30 TAC §307.10(1)]

(2) Appendix B - Sole-source Surface Drinking Water Supplies:

Figure: 30 TAC §307.10(2)

[Figure: 30 TAC §307.10(2)]

(3) Appendix C - Segment Descriptions:

Figure: 30 TAC §307.10(3)

[Figure: 30 TAC §307.10(3)]

(4) Appendix D - Site-specific Uses and Criteria for Unclassified Water Bodies:

Figure: 30 TAC §307.10(4)

[Figure: 30 TAC §307.10(4)]

(5) Appendix E - Site-specific Toxic Criteria:

Figure: 30 TAC §307.10(5)

[Figure: 30 TAC §307.10(5)]

(6) Appendix F - Site-specific Nutrient Criteria for Selected Reservoirs:

Figure: 30 TAC §307.10(6)

[Figure: 30 TAC §307.10(6)]

(7) Appendix G - Site-specific Recreational Uses and Criteria for Unclassified Water Bodies:

Figure: 30 TAC §307.10(7)

[Figure: 30 TAC §307.10(7)]

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

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-6812



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

#### CHAPTER 15. DRIVER LICENSE RULES SUBCHAPTER C. EXAMINATION REQUIREMENTS

##### 37 TAC §15.61

The Texas Department of Public Safety (the department) proposes amendments to §15.61, concerning Third Party Skills Testing. Texas Transportation Code, §521.165 authorizes the department to permit third parties to administer the skills test for a driver license on the department's behalf. The amendments update language to reflect the change in driver education program administration from Texas Education Agency (TEA) to the Texas Department of Licensing and Regulation (TDLR). The amendments also reduce the amount of time an authorized organization or instructor must have been licensed in order to participate in the Third Party Skills Testing (TPST) program and clarify that qualifying successor in interest ownership changes will not prevent program participation.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses



required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be more scheduling and location options for driver license applicants to take the skills test which will free resources in driver license field offices to perform other services, thereby decreasing customer wait times.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Janie Sawatsky, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to [DLDrulecomments@dps.texas.gov](mailto:DLDrulecomments@dps.texas.gov). Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §521.165, which authorizes the department to delegate skills testing to other entities.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.165 are affected by this proposal.

§15.61. *Third Party Skills Testing.*

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

(1) Authorized organization (AO)--An entity that has entered into a Memorandum of Understanding (MOU) with the department to administer the driving skills test for a non-commercial driver license on the department's behalf.

(2) Examiner--An individual certified by the department to conduct a skills test.

(3) Successor in interest--Change of ownership of a business that is carried on and controlled substantially as it was before the ownership change.

(b) An organization is eligible to enter into a MOU [Memorandum of Understanding] with the department and to administer a skills test for a non-commercial driver license if it:

(1) Maintains a valid driver education school license issued by the Texas Department of Licensing and Regulation (TDLR) [Texas Education Agency];

(2) Has held the driver education school license issued by the TDLR [Texas Education Agency] for a minimum of one year [two years];

(3) Ensures completion of the appropriate [Teaches the] Impact Texas Drivers (ITD) curriculum to its driver education students; and

(4) Complies with the requirements of the MOU [Memorandum of Understanding] with the department.

(c) An individual employed by an AO [authorized organization] is eligible to become an examiner and conduct skills tests if he or she:

(1) Maintains a valid driver education instructor license issued by the TDLR [Texas Education Agency];

(2) Has held the driver education instructor license issued by the TDLR [Texas Education Agency] for at least one year [two years];

(3) Maintains a valid, unexpired Texas driver license;

(4) Has not been convicted of:

(A) Any felony;

(B) Criminally negligent homicide;

(C) Driving while intoxicated within seven years; or

(D) Driving under the influence within seven years.

(5) Does not have six or more points assigned to his or her Texas driver license;

(6) Has successfully completed the department prescribed training set out in the MOU [Memorandum of Understanding]; and

(7) Conforms to the standards of the MOU [Memorandum of Understanding] between the department and his or her employer.

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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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



## SUBCHAPTER I. RELEASE OF DRIVER RECORD INFORMATION

### 37 TAC §15.142

The Texas Department of Public Safety (the department) proposes amendments to §15.142, concerning Agreement to Monitor Certain Records and Purchase Driver Record Information. These amendments are necessary to conform to changes made by the 85th Legislative Session, HB 1699 to Texas Transportation Code, §521.062 regarding program qualifications.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be the insurance industry monitoring more drivers to ensure increased safety on Texas roadways.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Janie Sawatsky, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to [DLDrulecomments@dps.texas.gov](mailto:DLDrulecomments@dps.texas.gov). Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §521.062, which authorizes the department to conduct a pilot program to provide driver record monitoring services.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.062 are affected by this proposal.

§15.142. *Agreement to Monitor Certain Records and Purchase Driver Record Information.*

(a) The department approved Agreement Form will be used by all parties desiring to monitor certain records and/or purchase driver record information.

(1) The pilot for a driver record monitoring program will be limited to persons eligible under Texas Transportation Code, §521.062(b). [~~Solicitation for participation will be announced in the Texas Register, and selection criteria will be established so that agreements will be made with a maximum of three participants.~~]

(2) Fees for the driver record monitoring program will be set by contract based on the volume of records purchased during the period of the contract, and will be no less than \$ .06 per record per month monitored to no more than \$ .20 per record per month monitored.

~~[(b) The department will review all agreements to determine the requestor's eligibility to enter into this agreement.]~~

~~(b) [(e)] The agreement will contain [require the following information]:~~

~~(1) All names used by the requestor, including names of all sub parties and companies making up the requestor's entity.~~

~~(2) All web address internet sites (Uniform Resource Locator - URL) used by the requestor.~~

~~(3) Nature of the entity's business practices.~~

~~(4) Detailed explanation of the intended uses of the requested information.~~

~~(5) Copies of agreements used by the requestor to release driver record information to third parties.~~

~~(6) Any additional material provided to third party requestors detailing the process in which they obtain driver record information and describing their limitations as to how this information may be used.~~

~~(c) [(d)] If the department determines any of the information provided is incomplete, inaccurate, or does not meet statutory requirements the department will not enter into an agreement to release driver record information.~~

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 23. VEHICLE INSPECTION

### SUBCHAPTER D. VEHICLE INSPECTION ITEMS, PROCEDURES, AND REQUIREMENTS

#### 37 TAC §23.41, §23.42

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 37 TAC §23.41(b) and §23.42(b) are not included in the print version of the Texas Register. These figures are available in the on-line version of the September 8, 2017, issue of the Texas Register.)*The Texas Department of Public Safety (the department) proposes amendments to §23.41 and §23.42, concerning Vehicle Inspection Items, Procedures, and Requirements. The amendments reflect changes to the attached graphics necessitated by 85th Legislative Session, S.B. 1001. The bill raises the inspection exemption weight limit for trailers from 4,500 pounds to 7,500 pounds, requiring amendment to the attached graphics' inspection guidelines. The proposed amendments also include general updates and additional cleanup of language required by Transportation Code, Chapter 548.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect

there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be consistency with recent legislative changes and with federal regulations governing vehicle safety equipment.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email at <https://www.txdps.state.tx.us/rsd/contact/default.aspx>. Select "Vehicle Inspection". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce Chapter 548.

Texas Government Code, §411.004(3), and Texas Transportation Code, §548.002 are affected by this proposal.

#### §23.41. *Passenger (Non-Commercial) Vehicle Inspection Items.*

(a) All items of inspection enumerated in this section shall be required to be inspected in accordance with the Texas Transportation Code, Chapter 547, any other applicable state or federal law, and department or federal regulation as provided in the DPS Training and Operations Manual prior to the issuance of a vehicle inspection report.

(b) All items must be inspected in accordance with the attached inspection procedures. (The figure in this section reflects excerpts from the DPS Training and Operations Manual, Chapter 4.)  
Figure: 37 TAC §23.41(b)  
[Figure: 37 TAC §23.41(b)]

(c) A vehicle inspection report may not be issued for a vehicle equipped with a compressed natural gas (CNG) fuel system unless the vehicle inspector can confirm in a manner provided by subsection (d) of this section that:

(1) the CNG fuel container meets the requirements of Code of Federal Regulations, Title 49, §571.304; and

(2) the CNG fuel container has not exceeded the expiration date provided on the container's label.

(d) The requirements of subsection (c) of this section may be confirmed by any appropriate combination of the items detailed in this subsection:

(1) Observation of Container Label. The vehicle inspector may confirm the requirement of (c)(2) of this section through direct observation of the expiration date on the container;

(2) Observation of Label at Fueling Connection Receptacle. The vehicle inspector may confirm through direct observation of a label affixed to the vehicle by the original equipment manufacturer or by a certified installer or inspector of CNG systems (as defined in subsection (g) of this section) reflecting that the requirements of subsection (c)(1) or [(e)](2) of this section are satisfied; or

(3) Documentation. The vehicle owner may furnish to the vehicle inspector documentation provided by the original vehicle equipment manufacturer or by a certified installer or inspector of CNG systems (as defined in subsection (g) of this section) reflecting that either or both requirements of subsection (c)(1) and (2) of this section are satisfied.

(e) The owner or operator of a fleet vehicle may, as an alternative to the requirements of subsection (c) of this section, provide proof in the form of a written statement or report issued by the owner or operator that the vehicle is a fleet vehicle for which the fleet operator employs a certified installer or inspector of CNG systems (as defined in subsection (g) of this section).

(f) A copy of the written statement or report provided to the vehicle inspector under subsections (d)(3) or (e) of this section must be maintained in the vehicle inspection station's files for a period of one year from the date of the inspection and made available to the department on request.

(g) Certified installer or inspector of CNG systems: For purposes of this section, a certified installer or inspector of CNG systems is a person licensed by the Railroad Commission of Texas under 16 TAC §13.61.

#### §23.42. *Commercial Vehicle Inspection Items.*

(a) All items of inspection enumerated in this section must be inspected in accordance with the Federal Motor Carrier Safety Regulations, Texas Transportation Code, Chapter 547, and any other applicable state law and department regulation as provided in the DPS Training and Operations Manual prior to the issuance of a passing vehicle inspection report.

(b) All items must be inspected in accordance with the attached inspection procedures. The figure in this section reflects excerpts from the DPS Training and Operations Manual, Chapter 6.  
Figure: 37 TAC §23.42(b)  
[Figure: 37 TAC §23.42(b)]

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

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D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
Earliest possible date of adoption: October 8, 2017  
For further information, please call: (512) 424-5848



## CHAPTER 36. METALS RECYCLING ENTITIES

### SUBCHAPTER B. CERTIFICATE OF REGISTRATION

#### 37 TAC §36.16

The Texas Department of Public Safety (the department) proposes amendments to §36.16, concerning Renewal of Certificate of Registration. This amendment is necessary to clarify the authority of the department to deny an application for renewal if the applicant is found to have been operating with an expired certificate of registration.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be greater clarity in the rules and improved efficiency in the administration of the Metals Recycling Program.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email at <https://www.dps.texas.gov/rsd/contact/default.aspx>. Select "Texas Metals Program". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commis-

sion to adopt rules considered necessary for carrying out the department's work, and Texas Occupations Code, §1956.013, which authorizes the commission to adopt rules to administer Chapter 1956.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1956.013, are affected by this proposal.

#### §36.16. *Renewal of Certificate of Registration.*

(a) To renew a certificate of registration, an application for renewal and the appropriate renewal fee must be submitted prior to the certificate's expiration date but not more than forty-five (45) days before the expiration date of the current certificate of registration.

(b) A certificate of registration that has been expired less than one (1) year may be renewed by submitting an application for renewal and the appropriate renewal fee pursuant to §36.17 of this title (relating to Fees).

(c) A certificate of registration that has expired for one (1) year or more may not be renewed. An application for a new certificate of registration must be submitted according to the procedures pursuant to §36.11 of this title (relating to Application for Certificate of Registration) and by paying the appropriate fees pursuant to §36.17 of this title.

(d) To renew a certificate of registration, registrants must submit proof of training pursuant to §36.34 of this title (relating to Texas Metals Program Recycler Training). The department may waive this requirement if there have been no significant updates since the previous training.

(e) Except as authorized pursuant to §36.42 of this title (relating to Extension of Registration Renewal Deadlines for Military Service Members) no extension for registration renewal is authorized.

(f) An applicant for a renewal of certificate of registration that is expired is not authorized to engage in any activity for which a registration is required prior to being issued a renewal certificate of registration by the department. Violation of this subsection may result in the denial of the renewal application.

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

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D. Phillip Adkins  
General Counsel

Texas Department of Public Safety

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## SUBCHAPTER C. PRACTICE BY CERTIFICATE HOLDERS AND REPORTING REQUIREMENTS

#### 37 TAC §36.31, §36.36

The Texas Department of Public Safety (the department) proposes amendments to §36.31 and §36.36, concerning Practice by Certificate Holders and Reporting Requirements. These amendments are necessary to implement the requirements of 85th Legislative Session, S.B. 208.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be greater clarity in the rules and therefore improved efficiency in the administration of the Metals Recycling Program.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email at <https://www.dps.texas.gov/rsd/contact/default.aspx>. Select "Texas Metals Program". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Occupations Code, §1956.013, which authorizes the commission to adopt rules to administer Chapter 1956.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1956.013 are affected by this proposal.

#### §36.31. Reporting Requirements.

The statutorily required reports must include the physical [Not later than the second (2nd) working day after the date of purchase or other acquisition of regulated material for which a record is required pursuant to §1956.033 of the Act, the entity shall collect and submit to the department an electronic transaction report using the department's on-line reporting system. The report must contain the statutorily required documentation. In addition, the] address of the individual from whom the regulated material is purchased [must be a physical address]. This address must not be a post office box.

#### §36.36. Standards of Conduct.

(a) Pursuant to §1956.035 of the Act, a metal recycling entity shall cooperate fully with any investigation or inspection conducted by

a peace officer, a representative of the department, or a representative of a county, municipality, or political subdivision that issues a license or permit under §1956.003(b) of the Act.

(b) Pursuant to §1956.035 of the Act, a metal recycling entity shall permit access during normal business hours to a person authorized to inspect.

(c) A metal recycling entity must not purchase, sell, or possess an explosive device, as defined by §1956.001(6-a) of the Act [any regulated material that reasonably could have been known to contain a substance as defined by Texas Penal Code, §46.01(2)].

(d) If convicted of a disqualifying offense pursuant to §36.55 of this title (relating to Disqualifying Offenses), an applicant or registrant shall notify the department within seventy-two (72) hours of the conviction. Notification shall be made in a manner prescribed by the department.

(e) Any violation of subsection (a) - (d); ~~(b)~~, or ~~(e)~~ of this section by a business owner, or on-site representative will be construed as a violation by the registrant.

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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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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## SUBCHAPTER E. DISCIPLINARY PROCEDURES AND ADMINISTRATIVE PROCEDURES

### 37 TAC §§36.52, 36.56, 36.60

The Texas Department of Public Safety (the department) proposes amendments to §§36.52, 36.56, and 36.60, concerning Disciplinary Procedures and Administrative Procedures. These amendments are necessary to implement the requirements of the 85th Legislative Session, SB 208, which expand the conduct for which the department may impose an administrative penalty against a person and require the department adopt by rule a standardized penalty schedule.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be

greater efficiency in the administration of the Metals Recycling Program, specifically with respect to the administrative disciplinary process.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email at <https://www.dps.texas.gov/rsd/contact/default.aspx>. Select "Texas Metals Program". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, Texas Occupations Code, §1956.013, which authorizes the commission to adopt rules to administer Chapter 1956; and Texas Occupations Code, §1956.041, which requires that the commission adopt rules establishing a standardized penalty schedule for certain violations of the statute or rules.

Texas Government Code, §411.004(3), Texas Occupations Code, §1956.013; and Texas Occupations Code, §1956.041, are affected by this proposal.

*§36.52. Advisory Letters, Reprimands and Suspensions of a Certificate of Registration.*

(a) The department may reprimand a person who is registered under the Act or suspend a certificate of registration of a person who is registered under the Act if the person:

(1) Fails to submit the required reports to the department pursuant to §1956.036 of the Act;

(2) Willfully or knowingly submits false, inaccurate, or incomplete information to the department on the reports submitted pursuant to §1956.036 of the Act;

(3) Fails to preserve the records required pursuant to §1956.034 of the Act; ~~or~~

(4) Fails to pay in full, within twenty (20) days of receipt of a final order, an administrative penalty assessed under §36.60 of this title (relating to Administrative Penalties), for which the department has issued a final order; or

(5) ~~[(4)]~~ Violates the Act or this chapter.

(b) For the first (1st) violation of subsection (a) of this section, the person may receive a written reprimand in the form of a letter notifying the person of the violation and directing the person to immediately remedy the violation.

(c) For a second (2nd) violation of subsection (a) of this section occurring within two (2) years of an earlier violation for which a final order has been issued, the person's certificate of registration may be suspended for a period not to exceed three (3) months.

(d) For a third (3rd) violation of subsection (a) of this section occurring within two (2) years of two (2) earlier violations for which final orders have been issued, the person's certificate of registration may be suspended for a period not to exceed six (6) months.

(e) Upon receipt of a notice of reprimand or suspension under this section, a person may request a hearing before the department pursuant to §36.56 of this title (relating to Informal Hearings). The failure to timely appeal the proposed action will result in the issuance of a final order.

(f) In lieu of a reprimand imposed pursuant to subsection (b) of this section, the person may receive an advisory letter.

(g) Upon issuance of a final order for any violation of this section, the department may require a person to complete training pursuant to §36.34 of this title (relating to Texas Metals Program Recycler Training).

(h) A violation under (a)(4) of this section will result in suspension of the registration until the administrative penalty is paid in full. The registration may not be renewed until all administrative penalties for which final orders have been issued are paid in full.

*§36.56. Informal Hearings.*

(a) A person who receives notice of the department's intention to deny an application for a certification of registration, to reprimand, suspend or revoke a certificate of registration, [to be reprimanded, or] to prohibit the registrant [be prohibited] from paying cash for a purchase of regulated material pursuant to §1956.036(e) of the Act, or to impose an administrative penalty under §36.60 of this title (relating to Administrative Penalties), may appeal the decision by requesting an informal hearing.

(b) The request for hearing must be submitted by mail, facsimile, or electronic mail, to the department in the manner provided on the department's metals recycling program website within twenty (20) calendar days after receipt of notice of the department's proposed action [denial, suspension, revocation, or reprimand]. If a written request for a hearing is not submitted within twenty (20) calendar days of the date notice was received, the right to a hearing under this section or §36.57 of this title (relating to Hearings before the State Office of Administrative Hearings) is waived.

(c) An informal hearing will be scheduled and conducted by the department's designee.

(d) Following the informal hearing, the hearing officer will issue a written statement of findings to the person at the address on file. The result may be appealed to the State Office of Administrative Hearings as provided in §36.57 of this title.

*§36.60. Administrative Penalties.*

(a) In addition to or in lieu of discipline imposed pursuant to §36.52 of this title (relating to Advisory Letters, Reprimands and Suspensions of a Certificate of Registration) the department may impose an administrative penalty on a person who violates this Chapter or Subchapter A-2 or Subchapter A-3 [§1956.036] of the Act, or who engages in conduct that would constitute an offense under §1956.040(c-2) or (c-4) of the Act.

(b) The figure in this section reflects the department's penalty schedule applicable to administrative penalties imposed under this section. For any violation not expressly addressed in the penalty schedule,

the department may impose a penalty not to exceed \$500 for the first (1st) violation. For the second (2nd) violation within the preceding one (1) year period, the penalty may not exceed \$1,000. [For a first (1st) violation, the penalty may not exceed \$500.]

Figure: 37 TAC §36.60(b)

~~[(e) For a second (2nd) violation, within the preceding one (1) year period, the penalty may not exceed \$1,000.]~~

~~[(4) In determining the amount of the administrative penalty, the department shall consider:]~~

~~[(1) The degree of knowledge or intent;]~~

~~[(2) The amount necessary to deter a future violation;]~~

~~[(3) Efforts to correct the violation; and]~~

~~[(4) Any other matter that justice may require.]~~

(c) ~~[(e)]~~ Upon receipt of a notice of administrative penalty under this section, a person may request a hearing before the department pursuant to §36.56 of this title (relating to Informal Hearings). The failure to timely appeal the proposed action will result in the issuance of a final order.

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

Filed with the Office of the Secretary of State on August 25, 2017.

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General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 20. TEXAS WORKFORCE COMMISSION

#### CHAPTER 807. CAREER SCHOOLS AND COLLEGES

The Texas Workforce Commission (TWC) proposes adding the following new section to Chapter 807, relating to Career Schools and Colleges:

Subchapter Q. Truck Driver Training Programs, §807.326.

TWC proposes amendments to the following section of Chapter 807, relating to Career Schools and Colleges:

Subchapter A. General Provisions, §807.2.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Texas law charges TWC with exercising jurisdiction and control of the oversight of career schools and colleges operating in

Texas. TWC's Career Schools and Colleges department (CSC) licenses and regulates nonexempt private postsecondary career schools and colleges that offer vocational training or continuing education to Texas residents. TWC currently regulates more than 560 career schools and colleges, which provide training to more than 160,000 students annually.

House Bill (HB) 29 and Senate Bill (SB) 128, passed by the 85th Texas Legislature, Regular Session (2017), enacted new Texas Education Code §132.006 to require each career school or college that offers a Commercial Driver's License (CDL) training program to include, as a part of that program, education and training on the recognition and prevention of human trafficking. These rules are proposed under Texas Education Code §132.006, which directs TWC to adopt rules to administer this new requirement and, in conjunction with the Office of the Attorney General, to *establish the content of the required education and training*. Additionally, Texas Labor Code §301.0015 and §302.002(d) provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities. The legislation requires TWC to adopt these rules no later than December 1, 2017.

#### PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

##### SUBCHAPTER A. GENERAL PROVISIONS

TWC proposes the following amendments to Subchapter A:

###### §807.2. Definitions

New §807.2(26) adds the definition of Human Trafficking to read: "the action or practice of illegally transporting people from one country or area to another, typically for the purposes of forced labor or commercial sexual exploitation, including all offenses referred to in Chapter 20A of the Texas Penal Code."

##### SUBCHAPTER Q. TRUCK DRIVER TRAINING PROGRAMS

TWC proposes the following amendments to Subchapter Q:

###### §807.326. Required Training for Students

New §807.326 is added to require Career Schools and Colleges that offer CDL training to include education and training on the recognition and prevention of human trafficking, the content of which is to be established by TWC and the Office of the Attorney General.

#### PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small business, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule as required by House Bill (HB) 1290, passed by the 85th Texas Legislature, Regular Session (2017), and to be codified at Texas Government Code §2001.0045, does not apply to this rulemaking.

#### Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the proposed rules will not have an adverse economic impact on small businesses or rural communities, as these proposed rules place no requirements on small businesses or rural communities.

Doyle Fuchs, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be the education of professional truck drivers on indicators of human trafficking which can result in early detection and protection of affected persons.

#### PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Boards. TWC provided the concept paper regarding these rule amendments to the Boards for consideration and review. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposal may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to [TWCPolicyComments@twc.state.tx.us](mailto:TWCPolicyComments@twc.state.tx.us). Comments must be received or postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

#### SUBCHAPTER A. GENERAL PROVISIONS

##### 40 TAC §807.2

The amendment is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

##### §807.2. Definitions.

In addition to the definitions contained in §800.2 of this title, the following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Academic quarter--A period of instruction that includes at least ten weeks of instruction, unless otherwise approved by the Agency.

(2) Academic semester--A period of instruction that includes at least 15 weeks of instruction, unless otherwise approved by the Agency.

(3) Academic term--An academic quarter, academic semester, or other progress evaluation period.

(4) Academically related activity--An exam, tutorial, computer-assisted instruction, academic counseling, academic advisement, turning in a class assignment, or attending a study group that is assigned by the institution, or other activity as determined by the Agency.

(5) Accountant--An independent certified public accountant properly registered with the appropriate state board of accountancy.

(6) Act--Texas Education Code, Chapter 132, Career Schools and Colleges.

(7) Address of record--In addition to the mailing address contained in the application for a certificate of approval, each career school or college shall establish an e-mail address of record for a distribution list that consistently maintains a minimum of two current subscribers, with the format of the address to be "School#Director@xdo-main," e.g., S1111Director@gmail.com.

(8) Advertising--Any affirmative act designed to call attention to a school or program for the purpose of encouraging enrollment.

(9) Agency--The unit of state government established under Texas Labor Code, Chapter 301, that is presided over by the Commission and administered by the executive director to operate the integrated workforce development system and administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code Annotated, Title 4, Subtitle A, as amended. The definition of Agency shall apply to all uses of the term in rules contained in this chapter.

(10) Appellant--The party or the party's authorized hearing representative who files an appeal from an appealable determination or decision.

(11) Asynchronous distance education--Distance education training that the Agency determines is not synchronous.

(12) Class or course--An identifiable unit of instruction that is part of a program of instruction.

(13) Commission--The body of governance of the Texas Workforce Commission composed of three members appointed by the governor as established under Texas Labor Code §301.002 that includes one representative of labor, one representative of employers, and one representative of the public. The definition of Commission shall apply to all uses of the term in rules contained in this subchapter.

(14) Coordinating Board--The Texas Higher Education Coordinating Board.

(15) Course of instruction--A program or seminar.

(16) Course time--A course or class period that is:

(A) a 50-minute to 60-minute lecture, recitation, or class, including a laboratory class or shop training, in a 60-minute period;

(B) a 50-minute to 60-minute internship in a 60-minute period; or

(C) 60 minutes of preparation in asynchronous distance education.

(17) Date of notice--The date the notice is mailed, unless good cause exists for the hearing officer to determine otherwise.



(18) Date of request of hearing--The date on which the appellant or the hearing representative filed a written notice of appeal with the Agency by hand delivery, facsimile, or mail. If an appeal is mailed to the Agency, then the appeal is perfected as of the postmark date on the envelope containing the appeal request unless good cause exists for the hearing officer to determine otherwise. If an appeal is delivered by hand or facsimile after 5:00 p.m., the date of request shall be the next day.

(19) Distance education course--Either a seminar or a program that is offered to non-residence school students via correspondence or other media from a remote site on a self-paced schedule, excluding programs using interactive instruction.

(20) Distance education school--A school that offers only distance education courses.

(21) Employment--A graduating or graduate student's employment in the same or substantially similar occupation for which the student was trained.

(22) Good reputation--The possession of honesty and truthfulness, trustworthiness and reliability, and a professional commitment to the educational process and the training or preparing of a person for a field of endeavor in a business, trade, technical, or industrial occupation, as well as the condition of being regarded as possessing such qualities. In determining whether a person is of good reputation, the Agency is not limited to the following acts or omissions. The Agency may consider similar acts or omissions and rehabilitation efforts in response to prior convictions in making its determination. A person is considered to be of good reputation if the person:

(A) has never been convicted of a felony or any other crime that would constitute risk of harm to the school or students as determined by the Agency;

(B) has not been successfully sued for fraud or deceptive trade practices, or breach of contract, within the last 10 years;

(C) does not own or administer a school currently in violation of legal requirements, has never owned or administered a school with repeated violations, and has never owned or administered a school that closed with violations including, but not limited to, unpaid refunds; or

(D) has not knowingly falsified or withheld information from the Agency.

(23) Hearing--An informal, orderly, and readily available proceeding held before an impartial hearing officer. A party or hearing representative may present evidence to show that the Agency's determination should be reversed, affirmed, or modified.

(24) Hearing officer--An Agency employee designated to conduct impartial hearings and issue final administrative decisions.

(25) Hearing representative--Any individual authorized by a party to assist the party in presenting the party's appeal. A hearing representative may be legal counsel or another individual. Each party may have a hearing representative to assist in presenting the party's appeal.

(26) Human Trafficking--The action or practice of illegally transporting people for the purposes of forced labor or commercial sexual exploitation, including all offenses referred to in Chapter 20A of the Texas Penal Code.

(27) [(26)] Job placement--An affirmative effort by the school to assist the student in obtaining employment in the same

or substantially similar stated occupation for which the student was trained.

(28) [(27)] Master student registration list--A comprehensive list with an entry made for any person who signs an enrollment agreement, makes a payment to attend the school, or attends a class. The entry shall be made on the date the first of these events occurs.

(29) [(28)] Party--The person or entity with the right to participate in a hearing authorized in applicable statute or rule.

(30) [(29)] Program or program of instruction--A postsecondary program of organized instruction or study that may lead to an academic, professional, or vocational degree, certificate, or other recognized educational credential.

(31) [(30)] Refund--The completed payment of a refund such that the refund instrument has been negotiated or credited into the proper account(s).

(32) [(31)] Reimbursement contract basis--A school operating, or proposing to operate, under a contract with a state or federal entity in which the school receives payment upon completion of the training.

(33) [(32)] Residence school--A school that offers at least one program that includes classroom instruction or synchronous distance education.

(34) [(33)] Response deadline--Deadlines that fall on a weekend, an official state holiday, a state holiday for which minimal staffing is required, or a federal holiday are extended one working day.

(35) [(34)] Sanctions--Administrative or civil actions, including, but not limited to, penalties, revocation of approvals, or cease and desist orders taken by the Agency against an entity in response to violations of the Act or this chapter.

(36) [(35)] School--A "career school or career college," as defined in the Act, that includes each location where courses of instruction shall be offered.

(37) [(36)] Secondary education--Successful completion of public, private, or home schooling at the high school level or obtainment of a recognized high school equivalency credential.

(38) [(37)] Seminar--A course of instruction that enhances a student's career, as opposed to a program that teaches skills and fundamental knowledge required for a stated occupation. A seminar may include a workshop, an introduction to an occupation or cluster of occupations, a short course that teaches part of the skills and knowledge for a particular occupation, language training, continuing professional education, and review for postsecondary examination.

(39) [(38)] Seminar school--A school that offers only seminars.

(40) [(39)] Small school--A "small career school or college" as defined in the Act.

(41) [(40)] Stated occupation--An occupation for which a program is offered that:

(A) is recognized by a state or federal law or by a state or federal agency as existing or emerging;

(B) is in demand; and

(C) requires training to achieve entry-level proficiencies.

(42) [(41)] Student--Any individual solicited, enrolled, or trained in Texas by a school.

(43) [(42)] Suspension of enrollments--A sanction that requires the school to suspend enrollments, re-enrollments, advertising, and solicitation, and to cease, in any way, advising prospective students, either directly or indirectly, of the available courses of instruction.

(44) [(43)] Synchronous distance education--The Agency may determine distance education to be synchronous under the following conditions:

(A) the training is conducted simultaneously in real time, or the training is conducted so that the manner of delivery ensures that even if the instructor and student are separated by time, the course time of instruction that the student experiences can be determined; and

(B) there is consistent interaction between the student(s) and the instructor on a schedule that includes a definite time for completion of the program and periodic verifiable student completion/performance measures that allow the application of the progress standards of Subchapter L and attendance standards of Subchapter M of this chapter.

(45) [(44)] Title IV school--A career school or college that participates in student financial aid programs under Title IV, Higher Education Act of 1965 (20 U.S.C. Section 1070 et seq.).

(46) [(45)] Tour--A required, in-person inspection of the facilities and equipment pertaining to a course of instruction.

(47) [(46)] Week--Seven consecutive calendar days.

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

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Patricia Gonzalez

Deputy Director, Workforce Development Division Programs

Texas Workforce Commission

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For further information, please call: (512) 680-1655



## SUBCHAPTER Q. TRUCK DRIVER TRAINING PROGRAMS

### 40 TAC §807.326

The new rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed new rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.326. Required Training for Students.

All career schools and colleges Commercial Driver's License (CDL) training programs must include training on the recognition and prevention of human trafficking, the content of which is to be established by the Agency in collaboration with the Office of the Attorney General.

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 821. TEXAS PAYDAY RULES SUBCHAPTER C. WAGE CLAIMS

### 40 TAC §821.41, §821.42

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 821, relating to Texas Payday Rules:

Subchapter C. Wage Claims, §821.41 and §821.42

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 821 rule change is to facilitate implementation of House Bill (HB 2443), 85th Texas Legislature, Regular Session (2017), relating to the electronic filing of wage claims under the Texas Payday Act (Act).

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER C. WAGE CLAIMS

TWC proposes the following amendments to Subchapter C:

§821.41. Validity of Claim/Filing and Investigative Procedures

Section 821.41 is amended to add electronic submission of wage claims, through methods approved by TWC, as an additional way that a worker can file a claim for unpaid wages. Currently, Texas workers can submit claims for unpaid wages to TWC in person at their nearest Workforce Solutions Office, by mailing a wage claim form to TWC at a designated address, or by faxing a claim to a fax number designated by TWC. HB 2443 envisioned that, with advances in technology, TWC would better serve Texans by offering an electronic option for the public to submit wage claims. The proposed rule amendment comports with the intent of the statute to afford electronic wage claim submittal to Texas workers seeking that option while allowing TWC flexibility in the future to leverage as yet undeveloped or under-developed technologies related to electronic wage claim filing and management.

§821.42. Timeliness

Section 821.42 is amended to conform the timeliness requirements of wage claim filing to the new electronic submission mechanism mandated in HB 2443. Since TWC will be required to accept wage claims submitted electronically on or after January 1, 2018, it will be necessary to amend §821.42 to stipulate that a wage claim submitted electronically is deemed timely when it is received by TWC.

### PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, the TWC has determined that the requirement to repeal or amend a rule as required by HB 1290 passed by the 85th Legislature (to be codified at Texas Government Code §2001.0045), does not apply to this rulemaking.

#### Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the proposed rules will not have an adverse economic impact on small businesses or rural communities, as these proposed rules place no requirements on small businesses or rural communities.

Doyle Fuchs, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Paul Carmona, Director of the Regulatory Integrity Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to better serve Texas workers alleging unpaid wages by offering an electronic option for the submission of claims for such wages under the Act.

### PART IV. COORDINATION ACTIVITIES

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or emailed to [TWCPolicyComments@twc.state.tx.us](mailto:TWCPolicyComments@twc.state.tx.us). Comments must be received or postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

The amendments are proposed under Texas Labor Code §61.002 and §301.0015 which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules affect Texas Labor Code, Chapter 61.

#### §821.41. *Validity of Claim/Filing and Investigative Procedures.*

(a) A wage claim may be filed in person at an office of the Commission, by mailing the claim to an address designated by the

Commission, [or] by faxing the claim to a fax number designated by the Commission, or by electronic submission by way of web-based submission points identified through the Commission's Internet pages related to filing a wage claim.

(b) A wage claim must be filled out completely, legibly, and sufficiently to identify and allow the Commission to attempt contact with the employer.

#### §821.42. *Timeliness.*

(a) The Commission shall determine the filing date of a wage claim as the date delivered in person to the Commission, the date faxed to and received by the Commission at a fax number designated by the Commission, the date received by the Commission through electronic submission, or the date of a mailed wage claim based on the following:

(1) The postmark date of a wage claim properly addressed shall establish by a rebuttable presumption, the date upon which the wage claim was filed unless the party opposing this presumption presents evidence to establish some other filing date.

(2) Absent a postmark or evidence establishing some other filing date, the date of receipt by the Commission shall control.

(b) The Commission shall suspend the time limit for filing a wage claim only for those reasons required by law including, but not limited to, bankruptcy stays.

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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Patricia Gonzalez

Deputy Director, Workforce Development Division Programs

Texas Workforce Commission

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For further information, please call: (512) 680-1655



## TITLE 43. TRANSPORTATION

### PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

#### CHAPTER 217. VEHICLE TITLES AND REGISTRATION

The Texas Department of Motor Vehicles (department) proposes amendments to Chapter 217, Vehicle Titles and Registration, Subchapter A, Motor Vehicle Titles, §217.3, Motor Vehicle Titles, and §217.4, Initial Application for Title; and Subchapter D, Non-repairable and Salvage Motor Vehicles, §217.82, Definitions, and §217.84, Application for Non-repairable or Salvage Vehicle Title.

#### EXPLANATION OF PROPOSED AMENDMENTS

Amendments are proposed to §217.3 to update the maximum width and length for a travel trailer as authorized by Senate Bill (SB) 2076, 85th Legislature, Regular Session, 2017, which is effective September 1, 2017. An amendment is also proposed to clarify that if a trailer or semitrailer having a gross weight of 4,000 pounds or less has been titled previously, it must be titled by any subsequent owner.

Amendments are proposed to §217.4 to implement a portion of SB 2076 regarding a place of application when motor vehicle ownership is transferred and the county tax assessor-collector's office of the county in which the owner resides is closed or may be closed for a protracted period of time as defined by the department.

Proposed amendments to §217.82(13) amend the definition for nonrepairable motor vehicle to refer to the statutory definition.

Amendments to §217.84(b)(2) implement a portion of SB 2076 regarding the description of a motor vehicle included in an application for a nonrepairable or salvage vehicle title. Amendments to §217.84(b) also delete the paragraph (7) language because the information is no longer necessary in an application for a nonrepairable or salvage vehicle title and renumber the remaining paragraphs accordingly.

Other amendments update the references to "Nonrepairable" motor vehicles to be consistent with statute by deleting the unnecessary hyphen.

#### FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed amendments.

Jeremiah Kuntz, Director of the Vehicle Titles and Registration Division, has determined that there will be no impact on local economies or overall employment as a result of enforcing or administering the proposed amendments.

#### PUBLIC BENEFIT AND COST

Mr. Kuntz has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be clarity and consistency in the rules related to titling of trailers, semitrailers, and house trailers; place of application for a title; and application for nonrepairable or salvage vehicle title. There are no anticipated economic costs for persons required to comply with the amendments as proposed. There will be no adverse economic effect on small businesses or micro-businesses.

#### TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to [rules@txdmv.gov](mailto:rules@txdmv.gov). The deadline for receipt of comments is 5:00 p.m. on October 9, 2017.

### SUBCHAPTER A. MOTOR VEHICLE TITLES

#### 43 TAC §217.3, §217.4

#### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department

of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; and more specifically, Transportation Code, §501.0041, which provides the department may adopt rules to administer Transportation Code, Chapter 501, Certificate of Title Act.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 501.

#### §217.3. Motor Vehicle Titles.

Unless otherwise exempted by law or this chapter, the owner of any motor vehicle that is required to be registered in accordance with Transportation Code, Chapter 502, shall apply for a Texas title in accordance with Transportation Code, Chapter 501.

(1) Motorcycles, motor-driven cycles, autocycles, and mopeds.

(A) The title requirements of a motorcycle, motor-driven cycle, autocycle, and moped are the same requirements prescribed for any motor vehicle.

(B) A vehicle that meets the criteria for a moped and has been certified as a moped by the Department of Public Safety will be registered and titled as a moped. If the vehicle does not appear on the list of certified mopeds published by that agency, the vehicle will be treated as a motorcycle for title and registration purposes.

(2) Farm vehicles.

(A) The term "motor vehicle" does not apply to implements of husbandry, which may not be titled.

(B) Farm tractors owned by agencies exempt from registration fees in accordance with Transportation Code, §502.453, are required to be titled and registered with "Exempt" license plates issued in accordance with Transportation Code, §502.451.

(C) Farm tractors used as road tractors to mow rights of way or used to move commodities over the highway for hire are required to be registered and titled.

(D) Farm semitrailers with a gross weight of more than 4,000 pounds that are registered in accordance with Transportation Code, §502.146, may be issued a Texas title.

(3) Neighborhood electric vehicles. The title requirements of a neighborhood electric vehicle (NEV) are the same requirements prescribed for any motor vehicle.

(4) Trailers, semitrailers, and house trailers. Owners of trailers and semitrailers shall apply for and receive a Texas title for any stand alone (full) trailer, including homemade or shopmade full trailers, or any semitrailer having a gross weight in excess of 4,000 pounds. Owners of trailers and semitrailers having a gross weight of 4,000 pounds or less may apply for and receive a Texas title. If a trailer or semitrailer having a gross weight of 4,000 pounds or less has been titled previously, any subsequent owner shall apply for a Texas title for the trailer or semitrailer. House trailer-type vehicles must meet the criteria outlined in subparagraph (C) of this paragraph to be titled.

(A) The rated carrying capacity will not be less than one-third of its empty weight.

(B) Mobile office trailers, mobile oil field laboratories, and mobile oil field bunkhouses are not designed as dwellings, but are classified as commercial semitrailers and must be registered and titled as commercial semitrailers if operated on the public streets and highways.

(C) House trailer-type vehicles and camper trailers must meet the following criteria in order to be titled.

(i) A house trailer-type vehicle designed for living quarters and that is eight [body] feet six inches or more in width and 45 [40] feet or more in length (not including the hitch), is classified as a manufactured home or mobile home and is not eligible for a Texas title under Transportation Code, Chapter 501.

(ii) A house trailer-type vehicle that is less than eight feet six inches in width or less than 45 [40] feet in length is classified as a travel trailer and shall be registered and titled.

(iii) A camper trailer shall be titled as a house trailer and shall be registered with travel trailer license plates.

(iv) A recreational park model type trailer that is primarily designed as temporary living quarters for recreational, camping or seasonal use, is built on a single chassis, and is 400 square feet or less when measured at the largest horizontal projection when in the set up mode shall be titled as a house trailer and may be issued travel trailer license plates.

(5) Assembled vehicles.

(A) An assembled vehicle is a vehicle assembled from the three basic component parts (motor, frame, and body), except that a motorcycle must have a frame and motor, and a trailer or travel trailer will have no motor, and that is:

(i) assembled from new or used materials and parts by someone not regulated as a motor vehicle manufacturer;

(ii) altered or modified to the extent that it no longer reflects the original manufacturer's configuration; or

(iii) assembled from a kit even if a Manufacturer's Certificate of Origin or Manufacturer's Statement of Origin is provided.

(B) A newly assembled vehicle, for which a title has never been issued in this jurisdiction or any other, may be titled if:

(i) it is assembled and completed with a body, motor, and frame, except that a motorcycle must have a frame and motor, and a trailer or travel trailer will have no motor;

(ii) it is not created from different vehicle classes, (as established by the Federal Highway Administration, except as provided by subparagraph (C) of this paragraph), that were never engineered or manufactured to be combined with one another;

(iii) it has all safety components required by federal law during the year of assembly, unless the vehicle qualifies and is registered as a custom vehicle or street rod in accordance with Transportation Code, §504.501;

(iv) it is not a vehicle described by paragraph (6) of this section;

(v) for a vehicle assembled with a body, motor, and frame, the applicant provides proof, on a form prescribed by the department, of a safety inspection performed by an Automotive Service Excellence (ASE) technician with valid certification as a Certified Master Automobile and Light Truck Technician, certifying that the vehicle:

(I) is structurally stable;

(II) meets the necessary conditions to be operated safely on the roadway; and

(III) is equipped and operational with all equipment required by statute or rule as a condition of sale during the year

the vehicle was assembled unless it is being inspected pursuant to Subchapter G of this chapter;

(vi) for a vehicle assembled with a body, motor, and frame, the applicant submits a copy of the Certified Master Automobile and Light Truck Technician's ASE certification;

(vii) the applicant submits a Rebuilt Vehicle Statement; and

(viii) the applicant submits the following to establish the vehicle's vehicle identification number:

(I) an Application for Assigned or Reassigned Number, and Notice of Assigned Number or Installation of Reassigned Vehicle Identification Number, on forms prescribed by the department; or

(II) acceptable proof, as established by the department, of a vehicle identification number assigned by the manufacturer of the component part by which the vehicle will be identified.

(C) Component parts from the following vehicle classes may be interchanged with one another or used in the creation of an assembled vehicle:

(i) 2-axle, 4-tire passenger cars;

(ii) 2-axle, 4 tire pickups, panels and vans;

(iii) 6-tire dually pickups, of which the rear tires are dual tires.

(D) The ASE inspection for a newly assembled vehicle required under subparagraph (B) of this paragraph is in addition to the inspection required by Transportation Code, Chapter 548, except a vehicle that qualifies and is registered as a custom vehicle or street rod in accordance with Transportation Code, §504.501, is exempt from the inspection required under Transportation Code, Chapter 548, for the duration the vehicle is registered as such.

(E) An assembled vehicle which has previously been titled and/or registered in this or any other jurisdiction is subject to subparagraph (B)(i) - (iv) of this paragraph, but is not subject to subparagraph (B)(v) - (viii); however, it is subject to the inspection required by Transportation Code, Chapter 548, except a vehicle that qualifies and is registered as a custom vehicle or street rod in accordance with Transportation Code, §504.501.

(F) An assembled vehicle will be titled using the year it was assembled as the model year and "ASSEMBLED" or "ASVE" as the make of the vehicle unless the body of the vehicle is established to the department's satisfaction to be an original body from a particular year and make. An assembled vehicle utilizing an original body may be titled by the year and the make of the original body but must reflect a "RECONSTRUCTED" remark. An assembled vehicle not utilizing an original body may obtain a title with a "REPLICA" remark featuring the year and make of the replica if the vehicle resembles a prior model year vehicle. This subparagraph applies regardless of how the vehicle's model year or make was previously identified in this or any other jurisdiction.

(6) Not Eligible for Title. The following are not eligible for a Texas title regardless of the vehicle's previous title and/or registration in this or any other jurisdiction:

(A) vehicles that are missing or are stripped of their motor, frame, or body, to the extent that it materially alters the manufacturer's original design or makes the vehicle unsafe for on-road operation as determined by the department;

(B) vehicles designed or determined by the department to be a dune buggy;

(C) vehicles designed or determined by the department to be for on-track racing, unless such vehicles meet Federal Motor Vehicle Safety Standards (FMVSS) for on-road use and are reported to the National Highway Traffic Safety Administration;

(D) vehicles designed or determined by the department to be for off-road use only, unless specifically defined as a "motor vehicle" in Transportation Code, Chapter 501; or

(E) vehicles assembled, built, constructed, rebuilt, or reconstructed in any manner with:

(i) a body or frame from a vehicle which is a "non-repairable motor vehicle" as that term is defined in Transportation Code, §501.091(9); or

(ii) a motor or engine from a vehicle which is flood damaged, water damaged, or any other term which may reasonably establish the vehicle from which the motor or engine was obtained is a loss due to a water related event.

#### §217.4. Initial Application for Title.

(a) Time for application. A person must apply for the title not later than the 30th day after the date of assignment, except:

(1) in a seller-financed sale, the title must be applied for not later than the 45th day after the date the motor vehicle is delivered to the purchaser;

(2) a member of the armed forces or a member of a reserve component of the United States, a member of the Texas National Guard or of the National Guard of another state serving on active duty, must apply not later than the 60th day after the date of assignment of ownership; or

(3) as otherwise provided by Transportation Code, Chapter 501.

(b) Place of application. Except as otherwise provided by Transportation Code, Chapters 501 and 502, and by §217.84(a) of this title (relating to Application for Nonrepairable or Salvage Vehicle Title), when [When] motor vehicle ownership is transferred, a title application must be filed with:

(1) the county tax assessor-collector in the county in which the applicant resides or in the county in which the motor vehicle was purchased or encumbered, as selected by the applicant; ~~or;~~ ~~except:~~

(2) the county tax assessor-collector of a county who is willing to accept the application if the county tax assessor-collector's office of the county in which the owner resides is closed for more than one week or if the department is notified that the county tax assessor-collector's office may be closed for more than one week.

~~{(1) as provided by Transportation Code, Chapters 501 and 502 and by §217.84(a) of this title (relating to Application for Non-repairable or Salvage Vehicle Title);}~~

~~{(2) if a county has been declared a disaster area, the resident may apply at the closest unaffected county if the affected county tax assessor-collector estimates the county offices will be inoperable for a protracted period; or}~~

~~{(3) if the county tax assessor-collector office in the county in which the owner resides is closed for more than one week, the resident may apply to the county tax assessor-collector in a county that borders the closed county if the adjacent county agrees to accept the application.}~~

(c) Information to be included on application. An applicant for an initial title must file an application on a form prescribed by the department. The form will at a minimum require the:

(1) motor vehicle description including, but not limited to, the motor vehicle:

(A) year;

(B) make;

(C) identification number;

(D) body style; and

(E) empty weight;

(2) license plate number, if the motor vehicle is subject to registration under Transportation Code, Chapter 502;

(3) odometer reading and brand, or the word "exempt" if the motor vehicle is exempt from federal and state odometer disclosure requirements;

(4) previous owner's legal name and complete mailing address, if available;

(5) legal name as stated on the identification presented and complete address of the applicant;

(6) name and mailing address of any lienholder and the date of lien, if applicable;

(7) signature of the seller of the motor vehicle or the seller's authorized agent and the date the title application was signed; and

(8) signature of the applicant or the applicant's authorized agent and the date the title application was signed.

(d) Accompanying documentation. The title application must be supported by, at a minimum, the following documents:

(1) evidence of vehicle ownership, as described in §217.5 of this title (relating to Evidence of Motor Vehicle Ownership);

(2) an odometer disclosure statement properly executed by the seller of the motor vehicle and acknowledged by the purchaser, if applicable;

(3) proof of financial responsibility in the applicant's name, as required by Transportation Code, §502.046, unless otherwise exempted by law;

(4) an identification certificate if required by Transportation Code, Chapter 548, and Transportation Code, §501.030, and if the vehicle is being titled and registered, or registered only;

(5) a release of any liens, provided that if any liens are not released, they will be carried forward on the new title application with the following limitations:

(A) A lien recorded on out-of-state evidence as described in §217.5 cannot be carried forward to a Texas title when there is a transfer of ownership, unless a release of lien or authorization from the lienholder is attached; and

(B) A lien recorded on out-of-state evidence as described in §217.5 is not required to be released when there is no transfer of ownership from an out-of-state title and the same lienholder is being recorded on the Texas application as is recorded on the out-of-state title; and

(6) any documents required by §217.9 of this title (relating to Bonded Titles).

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 August 25, 2017.

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David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: October 8, 2017

For further information, please call: (512) 465-5665



## SUBCHAPTER D. NONREPAIRABLE AND SALVAGE MOTOR VEHICLES

### 43 TAC §217.82, §217.84

#### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; and more specifically, Transportation Code, §501.0041, which provides the department may adopt rules to administer Transportation Code, Chapter 501, Certificate of Title Act.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 501.

#### §217.82. Definitions.

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

(1) Casual sale--The sale by a salvage vehicle dealer, insurance company, or salvage pool operator of not more than five nonrepairable [~~non-repairable~~] or salvage motor vehicles to the same person during a calendar year. The term does not include a sale to a salvage vehicle dealer or the sale of an export-only motor vehicle to a person who is not a resident of the United States.

(2) Certificate of title--A written instrument that may be issued solely by and under the authority of the department and that reflects the transferor, transferee, vehicle description, license plate and lien information, and rights of survivorship agreement as specified in Subchapter A of this chapter or as required by the department.

(3) Application for Title--A form prescribed by the director of the department's Vehicle Titles and Registration Division that reflects the information required by the department to create a motor vehicle title record.

(4) Damage--Sudden damage to a motor vehicle caused by the motor vehicle being wrecked, burned, flooded, or stripped of major component parts. The term does not include gradual damage from any cause, sudden damage caused by hail, or any damage caused only to the exterior paint of the motor vehicle.

(5) Date of sale--The date of the transfer of possession of a specific vehicle from a seller to a purchaser.

(6) Department--The Texas Department of Motor Vehicles.

(7) Export-only sale--The sale of a nonrepairable [~~non-repairable~~] or salvage motor vehicle, by a salvage vehicle dealer, includ-

ing a salvage pool operator acting as agent for an insurance company, or a governmental entity, to a person who resides outside the United States.

(8) Flood damage--A title remark that is initially indicated on a nonrepairable [~~non-repairable~~] or salvage vehicle title to denote that the damage to the vehicle was caused exclusively by flood and that is carried forward on subsequent title issuance.

(9) Insurance company--A person authorized to write automobile insurance in this state or an out-of-state insurance company that pays a loss claim for a motor vehicle in this state.

(10) Manufacturer's certificate of origin--A form prescribed by the department showing the original transfer of a new motor vehicle from the manufacturer to the original purchaser, whether importer, distributor, dealer, or owner, and when presented with an application for title, showing, on appropriate forms prescribed by the department, each subsequent transfer between distributor and dealer, dealer and dealer, and dealer and owner.

(11) Metal recycler--A person who:

(A) is predominately engaged in the business of obtaining ferrous or nonferrous metal that has served its original economic purpose to convert the metal, or sell the metal for conversion, into raw material products consisting of prepared grades and having an existing or potential economic value;

(B) has a facility to convert ferrous or nonferrous metal into raw material products consisting of prepared grades and having an existing or potential economic value, by a method other than the exclusive use of hand tools, including the processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content of the metal; and

(C) sells or purchases the ferrous or nonferrous metal solely for use as raw material in the production of new products.

(12) Motor vehicle--A vehicle described by Transportation Code, §501.002(17).

(13) Nonrepairable [~~Non-repairable~~] motor vehicle--A motor vehicle as defined by Transportation Code, §501.091(9), [regardless of the year model, that is wrecked, damaged, or burned to the extent that the only residual value of the motor vehicle is as a source of parts or scrap metal, or that comes into this state under a title or other ownership document that indicates that the motor vehicle is non-repairable, junked, or for parts or dismantling only.]

(14) Nonrepairable [~~Non-repairable~~] vehicle title--A document that evidences ownership of a nonrepairable [~~non-repairable~~] motor vehicle.

(15) Out-of-state buyer--A person licensed in an automotive business by another state or jurisdiction if the department has listed the holders of such a license as permitted purchasers of salvage motor vehicles or nonrepairable [~~non-repairable~~] motor vehicles based on substantially similar licensing requirements and on whether salvage vehicle dealers licensed in Texas are permitted to purchase salvage motor vehicles or nonrepairable [~~non-repairable~~] motor vehicles in the other state or jurisdiction.

(16) Out-of-state ownership document--A negotiable document issued by another jurisdiction that the department considers sufficient to prove ownership of a nonrepairable [~~non-repairable~~] or salvage motor vehicle and to support issuance of a comparable Texas certificate of title for the motor vehicle. The term does not include a title issued by the department, including a:

(A) regular certificate of title;

- (B) nonrepairable [~~non-repairable~~] vehicle title;
- (C) salvage vehicle title;
- (D) salvage certificate;
- (E) Certificate of Authority to Demolish a Motor Vehicle; or
- (F) any other ownership document issued by the department.

(17) Person--An individual, partnership, corporation, trust, association, or other private legal entity.

(18) Rebuilt salvage certificate of title--A regular certificate of title evidencing ownership of a nonrepairable [~~non-repairable~~] motor vehicle that was issued a nonrepairable [~~non-repairable~~] vehicle title prior to September 1, 2003, or salvage motor vehicle that has been rebuilt.

(19) Salvage motor vehicle--A motor vehicle, regardless of the year model:

(A) that is:

(i) damaged or is missing a major component part to the extent that the cost of repairs exceeds the actual cash value of the motor vehicle immediately before the damage; or

(ii) damaged and comes into this state under an out-of-state ownership document that states on its face "accident damage," "flood damage," "inoperable," "rebuildable," "salvageable," or similar notation, and is not an out-of-state ownership document with a "rebuilt," "prior salvage," or similar notation, or a nonrepairable [~~non-repairable~~] motor vehicle; and

(B) does not include:

(i) a motor vehicle for which an insurance company has paid a claim for repairing hail damage, or theft, unless the motor vehicle was damaged during the theft and before recovery to the extent that the cost of repair exceeds the actual cash value of the motor vehicle immediately before the damage;

(ii) the cost of materials or labor for repainting the motor vehicle; or

(iii) sales tax on the total cost of repairs.

(20) Salvage vehicle dealer--A person engaged in this state in the business of acquiring, selling, dismantling, repairing, rebuilding, reconstructing, or otherwise dealing in nonrepairable [~~non-repairable~~] motor vehicles or salvage motor vehicles or used parts, including a person who is in the business of a salvage vehicle dealer, regardless of whether the person holds a license issued by the department to engage in the business. The term does not include a person who casually repairs, rebuilds, or reconstructs fewer than three salvage motor vehicles in the same calendar year.

(21) Salvage vehicle title--A document issued by the department that evidences ownership of a salvage motor vehicle.

*§217.84. Application for Nonrepairable [~~Non-repairable~~] or Salvage Vehicle Title.*

(a) Place of application. The owner of a nonrepairable [~~non-repairable~~] or salvage motor vehicle who is required to obtain or voluntarily chooses to obtain a nonrepairable [~~non-repairable~~] or salvage vehicle title, as provided by §217.83 of this title (relating to Requirement for Non-repairable or Salvage Vehicle Title), shall apply for a nonrepairable [~~non-repairable~~] or salvage vehicle title by submitting an application, the required accompanying documentation, and the statutory fee to the department.

(b) Information on application. An applicant for a nonrepairable [~~non-repairable~~] or salvage vehicle title shall submit an application on a form prescribed by the department. A completed form, in addition to any other information required by the department, must include:

(1) the name and current address of the owner;

(2) a description of the motor vehicle, including the model year, make, body style, and vehicle identification number; [~~motor vehicle's model year, make, model, identification number, body style, manufacturer's rated carrying capacity in tons for commercial vehicles, and empty weight;~~]

(3) a statement describing whether the motor vehicle is a nonrepairable [~~non-repairable~~] or salvage motor vehicle; and

(A) was the subject of a total loss claim paid by an insurance company under Transportation Code, §501.1001 or §501.1002;

(B) is a self-insured motor vehicle under Transportation Code, §501.091;

(C) is an export-only motor vehicle under Transportation Code, §501.099;

(D) was sold, transferred, or released to the owner or former owner of the motor vehicle; or

(E) was sold, transferred, or released to a buyer at casual sale by a salvage vehicle dealer, insurance company, or salvage pool operator;

(4) whether the damage was caused exclusively by flood;

(5) a description of the damage to the motor vehicle;

(6) the odometer reading and brand, or the word "exempt" if the motor vehicle is exempt from federal and state odometer disclosure requirements, if the motor vehicle is a salvage motor vehicle;

~~[(7) the name, address, and city and state of residence of the previous owner;]~~

(7) ~~[(8)]~~ the name and mailing address of any lienholder and the date of lien, as provided by subsection (e) of this section; and

(8) ~~[(9)]~~ the signature of the applicant or the applicant's authorized agent and the date the certificate of title application was signed.

(c) Accompanying documentation. A nonrepairable [~~non-repairable~~] or salvage vehicle title application must be supported, at a minimum, by:

(1) evidence of ownership, as described by subsection (d)(1) or (3) of this section, if the applicant is an insurance company that is unable to locate one or more of the owners;

(2) an odometer disclosure statement properly executed by the seller of the motor vehicle and acknowledged by the purchaser, if the motor vehicle is less than 10 model years old and the motor vehicle is a salvage motor vehicle; and

(3) a release of any liens.

(d) Evidence of nonrepairable [~~non-repairable~~] or salvage motor vehicle ownership.

(1) Evidence of nonrepairable [~~non-repairable~~] or salvage motor vehicle ownership properly assigned to the applicant must accompany the application for a nonrepairable [~~non-repairable~~] or salvage vehicle title, except as provided by paragraph (2) of this subsection. Evidence must include documentation sufficient to show own-



ership to the nonrepairable [~~non-repairable~~] or salvage motor vehicle, such as:

- (A) a Texas Certificate of Title;
- (B) a certified copy of a Texas Certificate of Title;
- (C) a manufacturer's certificate of origin;
- (D) a Texas Salvage Certificate;
- (E) a nonrepairable [~~non-repairable~~] vehicle title;
- (F) a salvage vehicle title;

(G) a comparable ownership document issued by another jurisdiction, except that if the applicant is an insurance company, evidence must be provided indicating that the insurance company is:

- (i) licensed to do business in Texas; or
- (ii) not licensed to do business in Texas, but has paid a loss claim for the motor vehicle in this state; or

(H) a photocopy of the inventory receipt or a title and registration verification evidencing surrender to the department of the negotiable evidence of ownership for a motor vehicle as provided by §217.86 of this title (relating to Dismantling, Scrapping, or Destruction of Motor Vehicles), and if the evidence of ownership surrendered was from another jurisdiction, a photocopy of the front and back of the surrendered evidence of ownership.

(2) An insurance company that acquires ownership or possession of a nonrepairable [~~non-repairable~~] or salvage motor vehicle through payment of a claim may apply for a nonrepairable [~~non-repairable~~] or salvage vehicle title to be issued in the insurance company's name without obtaining an ownership document or if it received an ownership document without the proper assignment of the owner if the company is unable to obtain a title from the owner, in accordance with paragraph (1) of this subsection, and the application is not made earlier than the 30th day after the date of payment of the claim. The application must also include:

(A) a statement that the insurance company has provided at least two written notices to the owner and any lienholder attempting to obtain the title or proper assignment of title for the motor vehicle;

(B) a copy of a document:

(i) indicating that payment has been made, including an electronic check, canceled check, or screen print from the insurance company's database that identifies the type of payment method; and

(ii) reflecting the vehicle identification number, vehicle owner names, name of the person to whom payment was made if different from vehicle owners, payment amount, and date payment was issued; and

(C) any unassigned or improperly assigned title in the insurance company's possession.

(3) An insurance company that acquires, through payment of a claim, ownership or possession of a salvage motor vehicle or nonrepairable [~~non-repairable~~] motor vehicle covered by an out-of-state ownership document may obtain a salvage vehicle title or nonrepairable [~~non-repairable~~] vehicle title in accordance with paragraph (1) or (2) of this subsection if:

(A) the motor vehicle was damaged, stolen, or recovered in this state; or

(B) the motor vehicle owner from whom the company acquired ownership resides in this state.

(4) A salvage pool operator may apply for title in the name of the salvage pool operator by providing to the department:

(A) documentation from the insurance company that:

(i) the salvage pool operator, on request of an insurance company, was asked to take possession of the motor vehicle subject to an insurance claim and the insurance company subsequently denied coverage or did not take ownership of the vehicle; and

(ii) the name and address of the owner of the motor vehicle and the lienholder, if any; and

(B) proof that the salvage pool operator, before the 31st day after receiving the information from the insurance company, sent a notice to the owner and any lienholder informing them that:

(i) the motor vehicle must be removed from the location specified in the notice not later than the 30th day after the date the notice is mailed; and

(ii) if the motor vehicle is not removed within the time specified in the notice, the salvage pool operator will sell the motor vehicle and retain from the proceeds any costs actually incurred by the operator in obtaining, handling, and disposing of the motor vehicle, except for charges:

(I) that have been or are subject to being reimbursed by a third party; and

(II) for storage or impoundment of the motor vehicle.

(5) Proof of notice under this subsection consists of:

(A) the validated receipts for registered or certified mail and return receipt or an electronic certified mail receipt, including signature receipt; and

(B) any unopened certified letters returned by the post office as unclaimed, undeliverable, or with no forwarding address.

(e) Recordation of lien on nonrepairable [~~non-repairable~~] and salvage vehicle titles. If the motor vehicle is a salvage motor vehicle, a new lien or a currently recorded lien may be recorded on the salvage vehicle title. If the motor vehicle is a nonrepairable [~~non-repairable~~] motor vehicle, only a currently recorded lien may be recorded on the nonrepairable [~~non-repairable~~] vehicle title.

(f) Issuance. Upon receipt of a completed nonrepairable [~~non-repairable~~] or salvage vehicle title application, accompanied by the statutory application fee and the required documentation, the department will, before the sixth business day after the date of receipt, issue a nonrepairable [~~non-repairable~~] or salvage vehicle title, as appropriate.

(1) If the condition of salvage is caused exclusively by flood, a "Flood Damage" notation will be reflected on the face of the document and will be carried forward upon subsequent title issuance.

(2) If a lien is recorded on a nonrepairable [~~non-repairable~~] or salvage vehicle title, the vehicle title will be mailed to the lienholder. For proof of ownership purposes, the owner will be mailed a receipt or printout of the newly established motor vehicle record, indicating a lien has been recorded.

(3) A nonrepairable [~~non-repairable~~] vehicle title will state on its face that the motor vehicle may:

(A) not be repaired, rebuilt, or reconstructed;

(B) not be issued a regular certificate of title or registered in this state;

- (C) not be operated on a public highway; and
- (D) may only be used as a source for used parts or scrap metal.

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 August 25, 2017.

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David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: October 8, 2017

For further information, please call: (512) 465-5665



## CHAPTER 217. VEHICLE TITLES AND REGISTRATION

The Texas Department of Motor Vehicles (department) proposes amendments to Chapter 217, Vehicle Titles and Registration, Subchapter B, Motor Vehicle Registration, §217.45, Specialty License Plates, Symbols, Tabs, and Other Devices; and Subchapter I, Fees, §217.182, Registration Transaction.

### EXPLANATION OF PROPOSED AMENDMENTS

Amendments are proposed to §217.45 and §217.182 to implement House Bill 561, 85th Legislature, Regular Session, 2017, which added Transportation Code, §551.452, License Plates for Package Delivery Vehicles, authorizing the department to issue a license plate for a vehicle operated by a motor carrier for the purpose of picking up and delivering mail, parcels, and packages.

The proposed amendments add "Package Delivery" to §217.45(c)(3)(B) to the list of vehicles that are issued one plate.

The proposed amendments add §217.45(k), package delivery vehicle, to establish the procedure and requirements to issue a "Package Delivery" license plate. The proposed amendments include a department fee of \$25 for each plate issued.

The proposed amendments add §217.182(6) to include issuance of a package delivery plate to the list of transactions defined as a registration transaction for purposes of the processing and handling fee.

### FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be minimal fiscal implications for state or local governments as a result of enforcing or administering the proposed amendments. The department has determined that the fee for a package delivery plate should be \$25, based on the expected demand and the cost of producing the plate.

Jeremiah Kuntz, Director of the Vehicle Titles and Registration Division, has determined that there will be minimal impact on local economies or overall employment as a result of enforcing or administering the proposed amendments.

### PUBLIC BENEFIT AND COST

Mr. Kuntz has also determined that for each year of the first five years the amendments are in effect, the public benefit antic-

ipated as a result of enforcing or administering the amendments will be a procedure to issue package delivery license plates. There will be minimal economic costs for persons required to comply with the proposed amendments. The fee for a package delivery license plate will be \$25. In addition, there will be a processing and handling fee of \$4.75. There will be minimal adverse economic effects on small businesses or micro-businesses to the extent they purchase any package delivery license plates.

### TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

### SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to [rules@txdmv.gov](mailto:rules@txdmv.gov). The deadline for receipt of comments is 5:00 p.m. on October 9, 2017.

## SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

### 43 TAC §217.45

#### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; and more specifically, Transportation Code, §504.0011, which authorizes the board to adopt rules to implement and administer Transportation Code, Chapter 504; and Transportation Code, §551.452(b), which requires the department by rule to establish a procedure to issue license plates to be used only for operation in accordance with Transportation Code, Chapter 551, Subchapter G, Package Delivery Vehicles. The amendment to §217.182 is authorized by Transportation Code, §502.1911, which directs the department to collect a fee to cover the expenses of collecting registration fees for issuance of a license plate.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 502, 551, and 663, and §643.001.

§217.45. *Specialty License Plates, Symbols, Tabs, and Other Devices.*

(a) Purpose and Scope. Transportation Code, Chapters 504 and 551 charge the department with providing specialty license plates, symbols, tabs, and other devices. For the department to perform these duties efficiently and effectively, this section prescribes the policies and procedures for the application, issuance, and renewal of specialty license plates, symbols, tabs, and other devices, through the county tax assessor-collectors, and establishes application fees, expiration dates, and registration periods for certain specialty license plates. This section does not apply to military license plates except as provided by §217.43 of this title (relating to Military Specialty License Plates).

(b) Initial application for specialty license plates, symbols, tabs, or other devices.

(1) Application Process.

(A) Procedure. An owner of a vehicle registered as specified in this subchapter who wishes to apply for a specialty license plate, symbol, tab, or other device must do so on a form prescribed by the director.

(B) Form requirements. The application form shall at a minimum require the name and complete address of the applicant.

(2) Fees and Documentation.

(A) The application must be accompanied by the prescribed registration fee, unless exempted by statute.

(B) The application must be accompanied by the statutorily prescribed specialty license plate fee. If a registration period is greater than 12 months, the expiration date of a specialty license plate, symbol, tab, or other device will be aligned with the registration period and the specialty plate fee will be adjusted to yield the appropriate fee. If the statutory annual fee for a specialty license plate is \$5 or less, it will not be prorated.

(C) Specialty license plate fees will not be refunded after an application is submitted and the department has approved issuance of the license plate.

(D) The application must be accompanied by prescribed local fees or other fees that are collected in conjunction with registering a vehicle, with the exception of vehicles bearing license plates that are exempt by statute from these fees.

(E) The application must include evidence of eligibility for any specialty license plates. The evidence of eligibility may include, but is not limited to:

(i) an official document issued by a governmental entity; or

(ii) a letter issued by a governmental entity on that agency's letterhead.

(F) Initial applications for license plates for display on Exhibition Vehicles must include a photograph of the completed vehicle.

(3) Place of application. Applications for specialty license plates may be made directly to the county tax assessor-collector, except that applications for the following license plates must be made directly to the department:

- (A) County Judge;
- (B) Federal Administrative Law Judge;
- (C) State Judge;
- (D) State Official;
- (E) U.S. Congress--House;
- (F) U.S. Congress--Senate; and
- (G) U.S. Judge.

(4) Gift plates.

(A) A person may purchase general distribution specialty license plates as a gift for another person if the purchaser submits an application for the specialty license plates that provides:

(i) the name and address of the person who will receive the plates; and

(ii) the vehicle identification number of the vehicle on which the plates will be displayed.

(B) To be valid for use on a motor vehicle, the recipient of the plates must file an application with the county tax assessor-collector and pay the statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502 and this subchapter.

(c) Initial issuance of specialty license plates, symbols, tabs, or other devices.

(1) Issuance. On receipt of a completed initial application for registration, accompanied by the prescribed documentation and fees, the department will issue specialty license plates, symbols, tabs, or other devices to be displayed on the vehicle for which the license plates, symbols, tabs, or other devices were issued for the current registration period. If the vehicle for which the specialty license plates, symbols, tabs, or other devices are issued is currently registered, the owner must surrender the license plates currently displayed on the vehicle, along with the corresponding license receipt, before the specialty license plates may be issued.

(2) Classic Motor Vehicles, Classic Travel Trailers, Custom Vehicles, Street Rods, and Exhibition Vehicles.

(A) License plates. Texas license plates that were issued the same year as the model year of a Classic Motor Vehicle, Travel Trailer, Street Rod, or Exhibition Vehicle may be displayed on that vehicle under Transportation Code, §504.501 and §504.502, unless:

(i) the license plate's original use was restricted by statute to another vehicle type;

(ii) the license plate is a qualifying plate type that originally required the owner to meet one or more eligibility requirements; or

(iii) the alpha numeric pattern is already in use on another vehicle.

(B) Validation stickers and tabs. The department will issue validation stickers and tabs for display on license plates that are displayed as provided by subparagraph (A) of this paragraph.

(3) Number of plates issued.

(A) Two plates. Unless otherwise listed in subparagraph (B) of this paragraph, two specialty license plates, each bearing the same license plate number, will be issued per vehicle.

(B) One plate. One license plate will be issued per vehicle for all motorcycles and for the following specialty license plates:

(i) Antique Vehicle (includes Antique Auto, Antique Truck, Antique Motorcycle, and Antique Bus);

(ii) Classic Travel Trailer;

(iii) Rental Trailer;

(iv) Travel Trailer;

(v) Cotton Vehicle;

(vi) Disaster Relief;

(vii) Forestry Vehicle;

(viii) Golf Cart;

(ix) Log Loader; [and]

(x) Military Vehicle; and[-]

(xi) Package Delivery Vehicle.

(C) Registration number. The identification number assigned by the military may be approved as the registration number in-

stead of displaying Military Vehicle license plates on a former military vehicle.

(4) Assignment of plates.

(A) Title holder. Unless otherwise exempted by law or this section, the vehicle on which specialty license plates, symbols, tabs, or other devices is to be displayed shall be titled in the name of the person to whom the specialty license plates, symbols, tabs, or other devices is assigned, or a title application shall be filed in that person's name at the time the specialty license plates, symbols, tabs, or other devices are issued.

(B) Non-owner vehicle. If the vehicle is titled in a name other than that of the applicant, the applicant must provide evidence of having the legal right of possession and control of the vehicle.

(C) Leased vehicle. In the case of a leased vehicle, the applicant must provide a copy of the lease agreement verifying that the applicant currently leases the vehicle.

(5) Classification of neighborhood electric vehicles. The registration classification of a neighborhood electric vehicle, as defined by §217.3(3) of this title (relating to Motor Vehicle Titles) will be determined by whether it is designed as a 4-wheeled truck or a 4-wheeled passenger vehicle.

(6) Number of vehicles. An owner may obtain specialty license plates, symbols, tabs, or other devices for an unlimited number of vehicles, unless the statute limits the number of vehicles for which the specialty license plate may be issued.

(7) Personalized plate numbers.

(A) Issuance. The department will issue a personalized license plate number subject to the exceptions set forth in this paragraph.

(B) Character limit. A personalized license plate number may contain no more than six alpha or numeric characters or a combination of characters. Depending upon the specialty license plate design and vehicle class, the number of characters may vary. Spaces, hyphens, periods, hearts, stars, the International Symbol of Access, or silhouettes of the state of Texas may be used in conjunction with the license plate number.

(C) Personalized plates not approved. A personalized license plate number will not be approved by the executive director if the alpha-numeric pattern:

(i) conflicts with the department's current or proposed regular license plate numbering system;

(ii) would violate §217.27 of this title (relating to Vehicle Registration Insignia), as determined by the executive director; or

(iii) is currently issued to another owner.

(D) Classifications of vehicles eligible for personalized plates. Unless otherwise listed in subparagraph (E) of this paragraph, personalized plates are available for all classifications of vehicles.

(E) Categories of plates for which personalized plates are not available. Personalized license plate numbers are not available for display on the following specialty license plates:

(i) Amateur Radio (other than the official call letters of the vehicle owner);

(ii) Antique Motorcycle;

(iii) Antique Vehicle (includes Antique Auto, Antique Truck, and Antique Bus);

(iv) Apportioned;

(v) Cotton Vehicle;

(vi) Disaster Relief;

(vii) Farm Trailer (except Go Texan II);

(viii) Farm Truck (except Go Texan II);

(ix) Farm Truck Tractor (except Go Texan II);

(x) Fertilizer;

(xi) Forestry Vehicle;

(xii) Log Loader;

(xiii) Machinery;

(xiv) Permit;

(xv) Rental Trailer;

(xvi) Soil Conservation; and

(xvii) Texas Guard.

(F) Fee. Unless specified by statute, a personalized license plate fee of \$40 will be charged in addition to any prescribed specialty license plate fee.

(G) Priority. Once a personalized license plate number has been assigned to an applicant, the owner shall have priority to that number for succeeding years if a timely renewal application is submitted to the county tax assessor-collector each year in accordance with subsection (d) of this section.

(d) Specialty license plate renewal.

(1) Renewal deadline. If a personalized license plate is not renewed within 60 days after its expiration date, a subsequent renewal application will be treated as an application for new personalized license plates.

(2) Length of validation. With the following exceptions, all specialty license plates, symbols, tabs, or other devices shall be valid for 12 months from the month of issuance or for a prorated period of at least 12 months coinciding with the expiration of registration.

(A) Five-year period. Antique Vehicle (includes Antique Auto, Antique Truck, and Antique Bus) and Antique Motorcycle license plates, Antique tabs, and registration numbers are issued for a five-year period.

(B) Seven-year period. Foreign Organization license plates and registration numbers are issued for a seven-year period.

(C) March expiration dates. The registration for Cotton Vehicle and Disaster Relief license plates expires each March 31.

(D) June expiration dates. The registration for the Honorary Consul license plate expires each June 30.

(E) September expiration dates. The registration for the Log Loader license plate expires each September 30.

(F) December expiration dates. The registration for the following license plates expires each December 31:

(i) County Judge;

(ii) Federal Administrative Law Judge;

(iii) State Judge;

- (iv) State Official;
- (v) U.S. Congress--House;
- (vi) U.S. Congress--Senate; and
- (vii) U.S. Judge.

(G) Except as otherwise provided in this paragraph, if a vehicle's registration period is other than 12 months, the expiration date of the specialty license plate, symbol, tab, or other device will be set to align it with the expiration of registration.

(3) Renewal.

(A) Renewal notice. Approximately 60 days before the expiration date of a specialty license plate, symbol, tab, or other device, the department will send each owner a renewal notice that includes the amount of the specialty plate fee and the registration fee.

(B) Return of notice. The owner must return the fee and any prescribed documentation to the tax assessor-collector of the county in which the owner resides, except that the owner of a vehicle with one of the following license plates must return the documentation and specialty license plate fee, if applicable, directly to the department and submit the registration fee to the county tax assessor-collector:

- (i) County Judge;
- (ii) Federal Administrative Law Judge;
- (iii) State Judge;
- (iv) State Official;
- (v) U.S. Congress--House;
- (vi) U.S. Congress--Senate; and
- (vii) U.S. Judge.

(C) Expired plate numbers. The department will retain a specialty license plate number for 60 days after the expiration date of the plates if the plates are not renewed on or before their expiration date. After 60 days the number may be reissued to a new applicant. All specialty license plate renewals received after the expiration of the 60 days will be treated as new applications.

(D) Issuance of validation insignia. On receipt of a completed license plate renewal application and prescribed documentation, the department will issue registration validation insignia as specified in §217.27 unless this section or other law requires the issuance of new license plates to the owner.

(E) Lost or destroyed renewal notices. If a renewal notice is lost, destroyed, or not received by the vehicle owner, the specialty license plates, symbol, tab, or other device may be renewed if the owner provides acceptable personal identification along with the appropriate fees and documentation. Failure to receive the notice does not relieve the owner of the responsibility to renew the vehicle's registration.

(e) Transfer of specialty license plates.

(1) Transfer between vehicles.

(A) Transferable between vehicles. The owner of a vehicle with specialty license plates, symbols, tabs, or other devices may transfer the specialty plates between vehicles by filing an application through the county tax assessor-collector if the vehicle to which the plates are transferred:

- (i) is titled or leased in the owner's name; and

(ii) meets the vehicle classification requirements for that particular specialty license plate, symbol, tab, or other device.

(B) Non-transferable between vehicles. The following specialty license plates, symbols, tabs, or other devices are non-transferable between vehicles:

(i) Antique Vehicle license plates (includes Antique Auto, Antique Truck, and Antique Bus), Antique Motorcycle license plates, and Antique tabs;

(ii) Classic Auto, Classic Truck, Classic Motorcycle, Classic Travel Trailer, Street Rod, and Custom Vehicle license plates;

(iii) Forestry Vehicle license plates; and

(iv) Log Loader license plates.

(C) New specialty license plates. If the department creates a new specialty license plate under Transportation Code, §504.801, the department will specify at the time of creation whether the license plate may be transferred between vehicles.

(2) Transfer between owners.

(A) Non-transferable between owners. Specialty license plates, symbols, tabs, or other devices issued under Transportation Code, Chapter 504, Subchapters C, E, and F are not transferable from one person to another except as specifically permitted by statute.

(B) New specialty license plates. If the department creates a new specialty license plate under Transportation Code, §504.801, the department will specify at the time of creation whether the license plate may be transferred between owners.

(3) Simultaneous transfer between owners and vehicles. Specialty license plates, symbols, tabs, or other devices are transferable between owners and vehicles simultaneously only if the owners and vehicles meet all the requirements in both paragraphs (1) and (2) of this subsection.

(f) Replacement.

(1) Application. When specialty license plates, symbols, tabs, or other devices are lost, stolen, or mutilated, the owner shall apply directly to the county tax assessor-collector for the issuance of replacements, except that Log Loader license plates must be reapplied for and accompanied by the prescribed fees and documentation.

(2) Temporary registration insignia. If the specialty license plate, symbol, tab, or other device is lost, destroyed, or mutilated to such an extent that it is unusable, and if issuance of a replacement license plate would require that it be remanufactured, the owner must pay the statutory replacement fee, and the department will issue a temporary tag for interim use. The owner's new specialty license plate number will be shown on the temporary tag unless it is a personalized license plate, in which case the same personalized license plate number will be shown.

(3) Stolen specialty license plates.

(A) The department or county tax assessor-collector will not approve the issuance of replacement license plates with the same personalized license plate number if the department's records indicate either the vehicle displaying the personalized license plates or the license plates are reported as stolen to law enforcement. The owner will be directed to contact the department for another personalized plate choice.

(B) The owner may select a different personalized number to be issued at no charge with the same expiration as the stolen

specialty plate. On recovery of the stolen vehicle or license plates, the department will issue, at the owner's or applicant's request, replacement license plates, bearing the same personalized number as those that were stolen.

(g) License plates created after January 1, 1999. In accordance with Transportation Code, §504.702, the department will begin to issue specialty license plates authorized by a law enacted after January 1, 1999, only if the sponsoring entity for that license plate submits the following items before the fifth anniversary of the effective date of the law.

(1) The sponsoring entity must submit a written application. The application must be on a form approved by the director and include, at a minimum:

- (A) the name of the license plate;
- (B) the name and address of the sponsoring entity;
- (C) the name and telephone number of a person authorized to act for the sponsoring entity; and
- (D) the deposit.

(2) A sponsoring entity is not an agent of the department and does not act for the department in any matter, and the department does not assume any responsibility for fees or applications collected by a sponsoring entity.

(h) Assignment procedures for state, federal, and county officials.

(1) State Officials. State Official license plates contain the distinguishing prefix "SO." Members of the state legislature may be issued up to three sets of State Official specialty license plates with the distinguishing prefix "SO," or up to three sets of State Official specialty license plates that depict the state capitol, and do not display the distinguishing prefix "SO." An application by a member of the state legislature, for a State Official specialty license plate, must specify the same specialty license plate design for each applicable vehicle. State Official license plates are assigned in the following order:

- (A) Governor;
- (B) Lieutenant Governor;
- (C) Speaker of the House;
- (D) Attorney General;
- (E) Comptroller;
- (F) Land Commissioner;
- (G) Agriculture Commissioner;
- (H) Secretary of State;
- (I) Railroad Commission Presiding Officer followed by the remaining members based on their seniority;
- (J) Supreme Court Chief Justice followed by the remaining justices based on their seniority;
- (K) Criminal Court of Appeals Presiding Judge followed by the remaining judges based on their seniority;
- (L) Members of the State Legislature, with Senators assigned in order of district number followed by Representatives assigned in order of district number, except that in the event of redistricting, license plates will be reassigned; and

(M) Board of Education Presiding Officer followed by the remaining members assigned in district number order, except that in the event of redistricting, license plates will be reassigned.

(2) Members of the U.S. Congress.

(A) U.S. Senate license plates contain the prefix "Senate" and are assigned by seniority; and

(B) U.S. House license plates contain the prefix "House" and are assigned in order of district number, except that in the event of redistricting, license plates will be reassigned.

(3) Federal Judge.

(A) Federal Judge license plates contain the prefix "USA" and are assigned on a seniority basis within each court in the following order:

- (i) Judges of the Fifth Circuit Court of Appeals;
- (ii) Judges of the United States District Courts;
- (iii) United States Bankruptcy Judges; and
- (iv) United States Magistrates.

(B) Federal Administrative Law Judge plates contain the prefix "US" and are assigned in the order in which applications are received.

(C) A federal judge who retired on or before August 31, 2003, and who held license plates expiring in March 2004 may continue to receive federal judge plates. A federal judge who retired after August 31, 2003, is not eligible for U.S. Judge license plates.

(4) State Judge.

(A) State Judge license plates contain the prefix "TX" and are assigned sequentially in the following order:

- (i) Appellate District Courts;
- (ii) Presiding Judges of Administrative Regions;
- (iii) Judicial District Courts;
- (iv) Criminal District Courts; and
- (v) Family District Courts and County Statutory

Courts.

(B) A particular alpha-numeric combination will always be assigned to a judge of the same court to which it was originally assigned.

(C) A state judge who retired on or before August 31, 2003, and who held license plates expiring in March 2004 may continue to receive state judge plates. A state judge who retired after August 31, 2003, is not eligible for State Judge license plates.

(5) County Judge license plates contain the prefix "CJ" and are assigned by county number.

(6) In the event of redistricting or other plate reallocation, the department may allow a state official to retain that official's plate number if the official has had the number for five or more consecutive years.

(i) Development of new specialty license plates.

(1) Procedure. The following procedure governs the process of authorizing new specialty license plates under Transportation Code, §504.801, whether the new license plate originated as a result of an application or as a department initiative.

(2) Applications for the creation of new specialty license plates. An applicant for the creation of a new specialty license plate, other than a vendor specialty plate under §217.52 of this title (relating to Marketing of Specialty License Plates through a Private Vendor), must submit a written application on a form approved by the executive director. The application must include:

(A) the applicant's name, address, telephone number, and other identifying information as directed on the form;

(B) certification on Internal Revenue Service letterhead stating that the applicant is a not-for-profit entity;

(C) a draft design of the specialty license plate;

(D) projected sales of the plate, including an explanation of how the projected figure was established;

(E) a marketing plan for the plate, including a description of the target market;

(F) a licensing agreement from the appropriate third party for any intellectual property design or design element;

(G) a letter from the executive director of the sponsoring state agency stating that the agency agrees to receive and distribute revenue from the sale of the specialty license plate and that the use of the funds will not violate a statute or constitutional provision; and

(H) other information necessary for the board to reach a decision regarding approval of the requested specialty plate.

(3) Review process. The board:

(A) will not consider incomplete applications;

(B) may request additional information from an applicant if necessary for a decision; and

(C) will consider specialty license plate applications that are restricted by law to certain individuals or groups of individuals (qualifying plates) using the same procedures as applications submitted for plates that are available to everyone (non-qualifying plates).

(4) Request for additional information. If the board determines that additional information is needed, the applicant must return the requested information not later than the requested due date. If the additional information is not received by that date, the board will return the application as incomplete unless the board:

(A) determines that the additional requested information is not critical for consideration and approval of the application; and

(B) approves the application, pending receipt of the additional information by a specified due date.

(5) Board decision. The board's decision will be based on:

(A) compliance with Transportation Code, §504.801;

(B) the proposed license plate design, including:

(i) whether the design appears to meet the legibility and reflectivity standards established by the department;

(ii) whether the design meets the standards established by the department for uniqueness;

(iii) other information provided during the application process;

(iv) the criteria designated in §217.27 as applied to the design; and

(v) whether a design is similar enough to an existing plate design that it may compete with the existing plate sales; and

(C) the applicant's ability to comply with Transportation Code, §504.702 relating to the required deposit or application that must be provided before the manufacture of a new specialty license plate.

(6) Public comment on proposed design. All proposed plate designs will be considered by the board as an agenda item at a regularly or specially called open meeting. Notice of consideration of proposed plate designs will be posted in accordance with Office of the Secretary of State meeting notice requirements. Notice of each license plate design will be posted on the department's Internet website to receive public comment at least 25 days in advance of the meeting at which it will be considered. The department will notify all other specialty plate organizations and the sponsoring agencies who administer specialty license plates issued in accordance with Transportation Code, Chapter 504, Subchapter G, of the posting. A comment on the proposed design can be submitted in writing through the mechanism provided on the department's Internet website for submission of comments. Written comments are welcome and must be received by the department at least 10 days in advance of the meeting. Public comment will be received at the board's meeting.

(7) Final approval.

(A) Approval. The board will approve or disapprove the specialty license plate application based on all of the information provided pursuant to this subchapter at an open meeting.

(B) Application not approved. If the application is not approved under subparagraph (A) of this paragraph, the applicant may submit a new application and supporting documentation for the design to be considered again by the board if:

(i) the applicant has additional, required documentation; or

(ii) the design has been altered to an acceptable degree.

(8) Issuance of specialty plates.

(A) If the specialty license plate is approved, the applicant must comply with Transportation Code, §504.702 before any further processing of the license plate.

(B) Approval of the plate does not guarantee that the submitted draft plate design will be used. The board has final approval authority of all specialty license plate designs and may adjust or reconfigure the submitted draft design to comply with the format or license plate specifications.

(C) If the board, in consultation with the applicant, adjusts or reconfigures the design, the adjusted or reconfigured design will not be posted on the department's website for additional comments.

(9) Redesign of specialty license plate.

(A) Upon receipt of a written request from the applicant, the department will allow redesign of a specialty license plate.

(B) A request for a redesign must meet all application requirements and proceed through the approval process of a new specialty plate as required by this subsection.

(C) An approved license plate redesign does not require the deposit required by Transportation Code, §504.702, but the applicant must pay a redesign cost to cover administrative expenses.

(j) Golf carts.

(1) A county tax assessor-collector may issue golf cart license plates as long as the requirements under Transportation Code, §551.403 or §551.404 are met.

(2) A county tax assessor-collector may only issue golf cart license plates to residents or property owners of the issuing county.

(3) A golf cart license plate may not be used as a registration insignia, and a golf cart may not be registered for operation on a public highway.

(4) The license plate fee for a golf cart license plate is \$10.

(k) Package delivery vehicle.

(1) A county tax assessor-collector may issue package delivery license plates as long as the requirements under Transportation Code, §§551.453, 551.454, and 551.455 are met.

(2) The license plate fee for a package delivery license plate is \$25.

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 August 25, 2017.

TRD-201703341

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: October 8, 2017

For further information, please call: (512) 465-5665



## SUBCHAPTER I. FEES

### 43 TAC §217.182

#### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; and more specifically, Transportation Code, §504.0011, which authorizes the board to adopt rules to implement and administer Transportation Code, Chapter 504; and Transportation Code, §551.452(b), which requires the department by rule to establish

a procedure to issue license plates to be used only for operation in accordance with Transportation Code, Chapter 551, Subchapter G, Package Delivery Vehicles. The amendment to §217.182 is authorized by Transportation Code, §502.1911, which directs the department to collect a fee to cover the expenses of collecting registration fees for issuance of a license plate.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 502, 551, and 663, and §643.001.

*§217.182. Registration Transaction.*

As used in this subchapter, a registration transaction is a registration or registration renewal under Transportation Code, Chapter 502, or a transaction to issue the following:

(1) a registration, registration renewal, or permit issued under Transportation Code, Chapter 502, Subchapter C (Special Registrations);

(2) a license plate issued under Transportation Code, §502.146;

(3) a temporary additional weight permit under Transportation Code, §502.434;

(4) a license plate or license plate sticker under Transportation Code, §§504.501, 504.502, 504.506, or 504.507; [ø]

(5) a golf cart plate under Transportation Code, §551.402; or[-]

(6) a package delivery vehicle plate under Transportation Code, §551.452.

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 August 25, 2017.

TRD-201703342

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

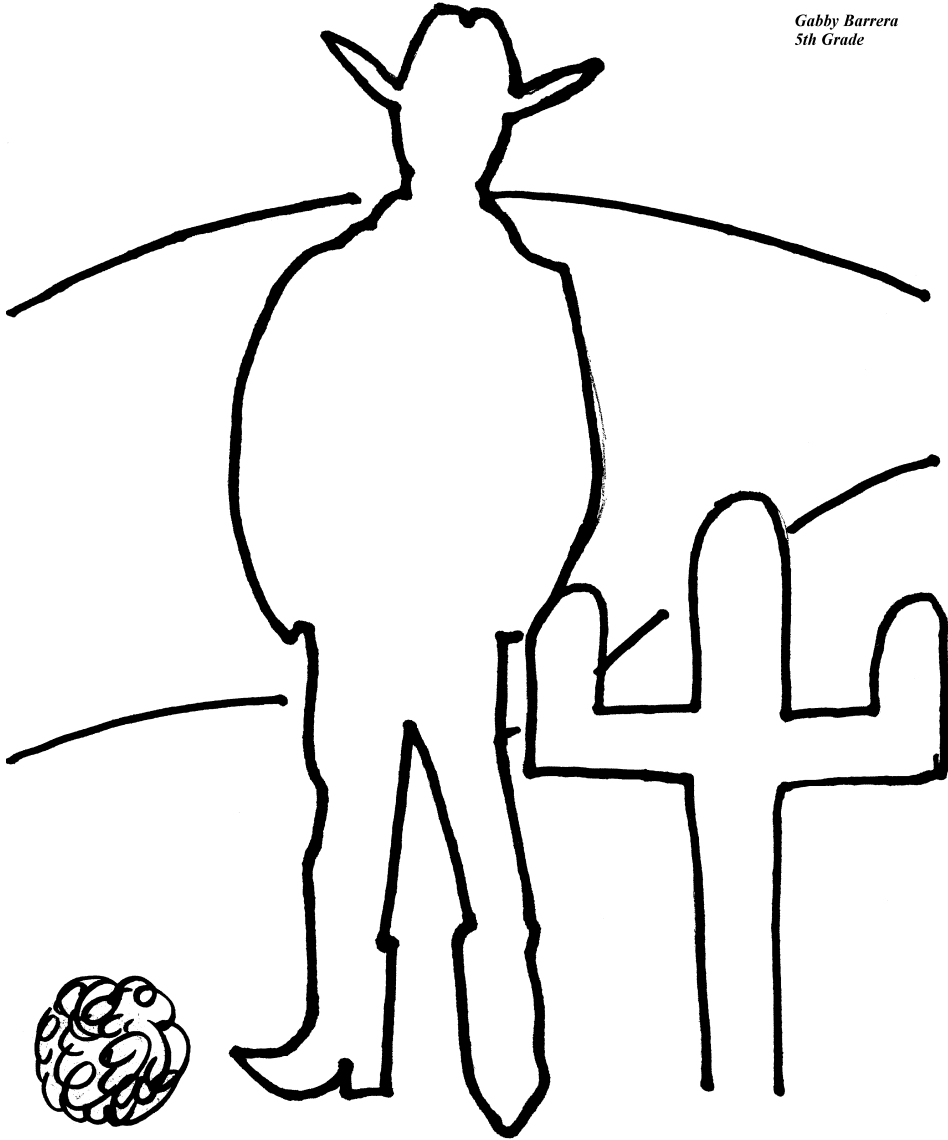
Earliest possible date of adoption: October 8, 2017

For further information, please call: (512) 465-5665





Gabby Barrera  
5th 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 16. ECONOMIC REGULATION

### PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

#### CHAPTER 90. OFFENDER EDUCATION PROGRAMS

##### SUBCHAPTER G. AUDITS AND ENFORCEMENT

###### 16 TAC §90.90

The Texas Department of Licensing and Regulation withdraws the proposed new §90.90 which appeared in the April 21, 2017, issue of the *Texas Register* (42 TexReg 2080).

Filed with the Office of the Secretary of State on August 28, 2017.

TRD-201703352

Brian E. Francis

Executive Director

Texas Department of Licensing and Regulation

Effective date: August 28, 2017

For further information, please call: (512) 463-8179



## TITLE 22. EXAMINING BOARDS

### PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

#### CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

##### SUBCHAPTER E. PRESCRIBING AND/OR DISPENSING MEDICATION

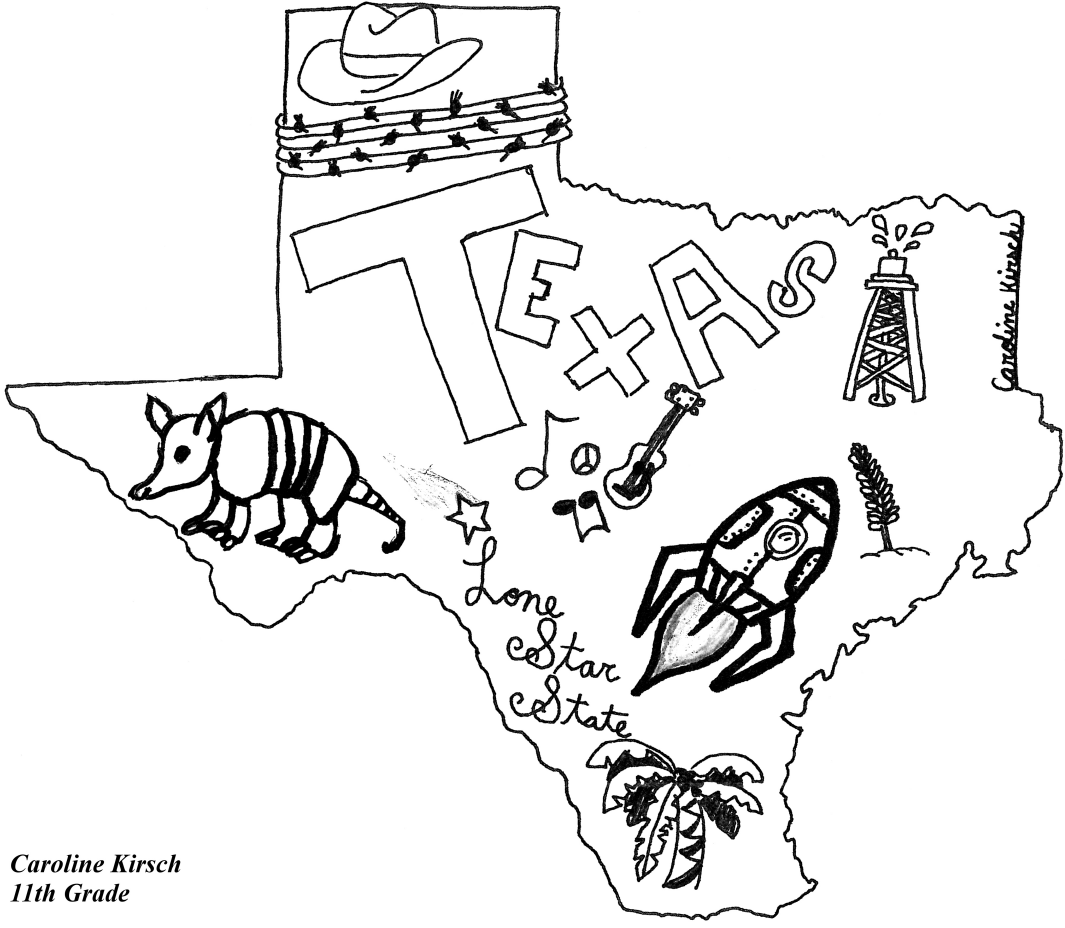
###### 22 TAC §573.43

Proposed amended §573.43, published in the February 24, 2017, issue of the *Texas Register* (42 TexReg 739), is automatically withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on August 28, 2017.

TRD-201703356





Caroline Kirsch

Caroline Kirsch  
11th 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 4. AGRICULTURE

### PART 2. TEXAS ANIMAL HEALTH COMMISSION

#### CHAPTER 38. TRICHOMONIASIS

##### 4 TAC §38.6

The Texas Animal Health Commission (commission) adopts amendments to §38.6, concerning Official Trichomoniasis Tests, without changes to the proposed text as published in the May 26, 2017, issue of the *Texas Register* (42 TexReg 2789).

The purpose of the amendments is to approve a new official Trichomoniasis test.

The Bovine Trich Working Group (TWG) met on April 11, 2017, to evaluate the effectiveness of current rules. The TWG discussed the program overview to date, the management of infected herds, entry requirements, and the need for possible revisions to the program.

The TWG recommended that the commission propose rules to authorize an additional official test. Texas A&M Veterinary Medical Diagnostic Laboratory (TVMDL) is in the process of implementing an enhanced Trichomoniasis testing technology for the Polymerase Chain Reaction (PCR) test. PCR is currently accepted as an official test or an official confirmatory test for Trichomoniasis. TVMDL's Direct Sample qPCR is an enhanced testing technology using PCR. Unlike the current PCR, the qPCR test does not require the sample to be incubated or placed in an InPouch. The TWG also recommended that the deadline for submitting samples to an approved laboratory remain at 96 hours, but encouraged submission of samples to be accomplished within 48 hours.

Further, the amendment adds the term InPouch to the culture testing requirement. This addition will ensure the sample is properly collected and submitted for testing.

The commission received two comments regarding the proposal, but no changes were made in response to the comments. One commenter made a comment regarding the difficulty of meeting the 96-hour submission timeframe instead of the 120-hour previously in the rule. Unfortunately, that was done through a previous rule amendment process and was not open for comments in this rule amendment. The other comment was supportive of the proposed testing using qPCR.

##### STATUTORY AUTHORITY

The amendments are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domes-

tic fowl from disease. The commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.005, entitled "Commission Written Instruments", the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire commission.

Pursuant to §161.006, entitled "Documents to Accompany Shipment", if required that a certificate or permit accompany animals or commodities moved in this state, the document must be in the possession of the person in charge of the animals or commodities, if the movement is made by any other means.

Pursuant to §161.0417, entitled "Authorized Personnel for Disease Control", a person, including a veterinarian, must be authorized by the commission in order to engage in an activity that is part of a state or federal disease control or eradication program for animals. Section 161.0417 requires the commission to adopt necessary rules for the authorization of such persons and, after reasonable notice, to suspend or revoke a person's authorization if the commission determines that the person has substantially failed to comply with Chapter 161 or rules adopted under that chapter. Section 161.0417 does not affect the requirement for a license or an exemption under Chapter 801, Occupations Code, to practice veterinary medicine.

Pursuant to §161.046, entitled "Rules", the commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.048, entitled "Inspection of Shipment of Animals or Animal Products", the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease.

Pursuant to §161.061, entitled "Establishment", if the commission determines that a disease listed in §161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place.

Pursuant to §161.101, entitled "Duty to Report", a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the diseases, if required by the commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis of the disease.

Pursuant to §161.113, entitled "Testing or Treatment of Livestock", if the commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission. The state may not be required to pay the cost of fees charged for the testing or vaccination. And if the commission requires the dipping of livestock under this subchapter, the livestock shall be submerged in a vat, sprayed, or treated in another sanitary manner prescribed by rule of the commission.

Pursuant to §161.114, entitled "Inspection of Livestock", an authorized inspector may examine livestock consigned to and delivered on the premises of a livestock market before the livestock are offered for sale. If the inspector considers it necessary, the inspector may have an animal tested or vaccinated. Any testing or vaccination must occur before the animal is removed from the livestock market.

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 August 23, 2017.

TRD-201703280

Gene Snelson

General Counsel

Texas Animal Health Commission

Effective date: September 12, 2017

Proposal publication date: May 26, 2017

For further information, please call: (512) 719-0722



## CHAPTER 51. ENTRY REQUIREMENTS

### 4 TAC §51.1, §51.8

The Texas Animal Health Commission (commission) adopts amendments to §51.1, concerning Definitions, and §51.8, concerning Cattle, without changes to the proposed text as published in the May 26, 2017, issue of the *Texas Register* (42 TexReg 2790).

The purpose of the amendments is to address Bovine Trichomoniasis requirements to enter the state.

Bovine Trichomoniasis (Trich) is a venereal disease of cattle. The Trich organism causes abortion and extended calving seasons. Bulls will remain persistently infected and spread infection from cow to cow.

The Bovine Trich Working Group (TWG) met on April 11, 2017, to evaluate the effectiveness of current Trichomoniasis rules. The TWG discussed the program overview to date, the management of infected herds, entry requirements, and the need for possible revisions to the program.

The TWG recommended a revision to the commission's current entry requirement regarding the use of a virgin certificate for breeding bulls between 12 months and 18 months of age. Commission rules generally require that bulls 12 months of age or

older have a negative Trich test within 60 days prior to entering Texas. However, bulls that are 18 months of age or younger and receive a virgin status certificate are exempt from this testing requirement. The TWG is concerned that this exemption provides an opportunity for unknown status bulls that are infected with Trich to enter the state. As such, the TWG recommended that the virgin status certification exemption be removed from the commission's rule.

The TWG recommended adding a testing requirement exemption for bulls that are 12 months of age or older, receive a permit from the commission prior to entry, and are moved directly to a federally approved livestock market. The certificate of veterinary inspection for the bull must include the entry permit number and a statement that the bull must be Trich tested or sold for slaughter. This recommendation is consistent with intrastate requirements for bulls being sold at markets. As such, the bulls entering under this exemption would be tracked using the existing infrastructure, which minimizes the risk of Trichomoniasis being spread by these bulls. For clarity, the commission is defining "directly", "federally approved market" and "Trichomoniasis" in the proposed rule.

The TWG also recommended the commission prohibit the entry of female cattle that originated from a known Trichomoniasis positive herd, or were exposed to known Trichomoniasis positive bull unless the animal is officially identified, obtains a commission issued permit and is moved directly to an approved slaughtering establishment, and accompanied by a certificate of veterinary inspection stating the animal is Trichomoniasis exposed.

The commission received four comments regarding the proposal, but no changes were made in response to the comments. One commenter was supportive of the proposed entry requirements. Another commenter indicated they had bought a breeding bull from a reputable breeder, but was later found to be infected. The commenter indicated it was probably because of infected cattle, which indicated to the commenter there was a need for regulations on cattle. The third commenter indicated that while desirable to contain Trich, the cost of a Trich test (\$200), with a turnaround time (5 days) makes an inhospitable environment to control. It then becomes an encumbrance to interstate bull sales making the commenter believe that the proposed regulation needs to be tabled until database, commence, genetic, and accuracy concerns can be resolved. Another comment focused on the fact that the restrictions based on female cattle in the proposal should also be done within the State of Texas. The commenter went on to provide the commission specific feedback and guidance on an instate Trich program to address the problem with female cattle. The commission appreciates the comment and will evaluate it for future consideration in the appropriate chapter.

#### STATUTORY AUTHORITY

The amendments are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.054, entitled "Regulation of Movement of Animals", the commission, by rule, may regulate the movement of animals. The commission may restrict the intrastate movement

of animals even though the movement of the animals is unrestricted in interstate or international commerce.

Pursuant to §161.048, entitled "Inspection of Shipment of Animals or Animal Products", the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease.

Pursuant to §161.005, entitled "Commission Written Instruments", the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire commission.

Pursuant to §161.044, entitled "Regulation of Livestock Movement from Stockyards or Railway Shipping Pens", the commission may regulate the movement of livestock out of stockyards or railway shipping pens and require treatment or certification of those animals as reasonably necessary to protect against communicable diseases.

Pursuant to §161.046, entitled "Rules", the commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.049, entitled "Dealer Records", the commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer.

Pursuant to §161.061, entitled "Establishment", if the commission determines that a disease listed in §161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place.

Pursuant to §161.081, entitled "Importation of Animals", the commission by rule may regulate the movement, including movement by a railroad company or other common carrier, of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country.

Pursuant to §161.112, entitled "Rules", the commission shall adopt rules relating to the movement of livestock, exotic livestock, and exotic fowl from livestock markets and shall require tests, immunization, and dipping of those livestock as necessary to protect against the spread of communicable diseases.

Pursuant to §161.113, entitled "Testing or Treatment of Livestock", if the commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission. The state may not be required to pay the cost of fees charged for the testing or vaccination. And if the commission requires the dipping of livestock under this subchapter, the

livestock shall be submerged in a vat, sprayed, or treated in another sanitary manner prescribed by rule of the commission.

Pursuant to §161.114, entitled "Inspection of Livestock", an authorized inspector may examine livestock consigned to and delivered on the premises of a livestock market before the livestock are offered for sale. If the inspector considers it necessary, the inspector may have an animal tested or vaccinated. Any testing or vaccination must occur before the animal is removed from the livestock market.

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 August 23, 2017.

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Gene Snelson

General Counsel

Texas Animal Health Commission

Effective date: September 12, 2017

Proposal publication date: May 26, 2017

For further information, please call: (512) 719-0722



## **TITLE 16. ECONOMIC REGULATION**

### **PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION**

#### **CHAPTER 62. CODE ENFORCEMENT OFFICERS**

The Texas Commission of Licensing and Regulation (Commission) adopts new rules at 16 Texas Administrative Code (TAC), Chapter 62, §§62.1, 62.20 - 62.25, 62.30, 62.65, 62.70 - 62.72, 62.90 and 62.91, regarding the Code Enforcement Officers program, without changes to the proposed text as published in the April 21, 2017, issue of the *Texas Register* (42 TexReg 2051). The rules will not be republished.

The Commission also adopts new rules at 16 TAC, Chapter 62, §62.10 and §62.80, regarding the Code Enforcement Officers program, with changes to the proposed text as published in the April 21, 2017, issue of the *Texas Register* (42 TexReg 2051). The rules will be republished.

The Texas Legislature enacted Senate Bill 202 (SB 202), 84th Legislature, Regular Session (2015), which, in part, transferred 13 occupational licensing programs in two phases from the Department of State Health Services (DSHS) to the Commission and the Texas Department of Licensing and Regulation (Department). The Commission and Department completed the Phase 1 transition of seven programs on October 3, 2016.

Under Phase 2, the following six programs are being transferred from DSHS to the Commission and the Department: (1) Laser Hair Removal, Texas Health and Safety Code, Chapter 401, §§401.501 - 401.522; (2) Massage Therapy, Texas Occupations Code, Chapter 455; (3) Code Enforcement Officers, Texas Occupations Code, Chapter 1952; (4) Sanitarians, Texas Occupations Code, Chapter 1953; (5) Mold Assessors and Remediators, Texas Occupations Code, Chapter 1958; and (6) Offender Education Programs, Alcoholic Beverage Code, Chapter 106, §106.115 (Alcohol Education Program for Minors); Transporta-

tion Code, Chapter 521, §§521.374 - 521.376 (Drug Offender Education Program); Code of Criminal Procedure, Chapter 42A, Articles 42A.403, 42A.405 and 42A.406 (formerly Chapter 42, Article 42.12, §13(h)) (DWI Education Program); and Code of Criminal Procedure, Chapter 42A, Articles 42A.404, 42A.405, and 42A.406 (formerly Chapter 42, Article 42.12, §13(j)) (DWI Intervention Program). The statutory amendments transferring regulation of these six Phase 2 programs from DSHS to the Commission and the Department will take effect on September 1, 2017.

The new rules were adopted to enable the Commission and the Department to regulate the six Phase 2 programs listed above. The adopted new rules provide for the Department to perform the various functions, including licensing, compliance, and enforcement, necessary to regulate these transferred programs. The effective date of adopted §§62.1, 62.10 and 62.65 is September 15, 2017, to allow the Department to establish an advisory committee. The effective date of the remaining adopted rule sections is November 1, 2017. The effective date will coincide with the completion of the transfer of the programs to the Commission and the Department.

The adopted new §62.1 provides the statutory authority for the Commission and the Department to regulate code enforcement officers.

The adopted new §62.10 creates the definitions to be used in the code enforcement officers program.

The adopted new §62.20 states the criteria for registration as a code enforcement officer or code enforcement officer in training; creates a process allowing a code enforcement officer in training to upgrade a registration to that of code enforcement officer; and requires the Department to grant a certificate of registration to a licensee or registrant of another state that has requirements for the licensing or registration of a code enforcement officer that are at least equivalent to those of this state.

The adopted new §62.21 states the criteria for taking a Department examination; requires compliance with the Department's examination requirements; and states that cheating on a Department examination is grounds for denial, suspension, or revocation of a registration and/or assessment of an administrative penalty.

The adopted new §62.22 states that a code enforcement officer registration expires two years from the date of issuance, and may be renewed biennially; a code enforcement officer in training registration expires one year from the date of issuance, and may be renewed annually; and that a registration is not transferable.

The adopted new §62.23 requires an applicant for a code enforcement officer or code enforcement officer in training registration to complete a 36-hour training program in code enforcement from an educational institution accredited or licensed by the Texas Education Agency or Texas Higher Education Coordinating Board. The adopted rule also defines a number of topics that must be covered in the training program.

The adopted new §62.24 sets out the continuing education requirements that must be met by a code enforcement officer or code enforcement officer in training in order to renew a registration.

The adopted new §62.25 states the requirements for renewal of a code enforcement officer or code enforcement officer in training registration.

The adopted new §62.30 restates the statutory exemptions from registration.

The adopted new §62.65 establishes the Code Enforcement Officers Advisory Committee to provide advice and recommendations to the Department on technical matters relevant to the administration of the code enforcement officers program. The adopted rule also states the structure of the board and sets out requirements for members' terms, appointment of a presiding officer, quorum, and removal of members.

The adopted new §62.70 states the general standards of conduct for engaging in code enforcement activities. The adopted rule states a number of requirements and prohibited acts for persons engaged in code enforcement.

The adopted new §62.71 sets out the responsibilities of persons who supervise code enforcement officers in training. The adopted rule states the qualifications of a supervisor, establishes prohibited conduct, and requires supervisors to notify the Department when supervision of a code enforcement officer in training ceases.

The adopted new §62.72 lists the responsibilities of code enforcement officers in training (supervisees) under the supervision of a registered code enforcement officer. The adopted rule requires a supervisee to maintain current information with the Department regarding the details of the supervisee's work and supervision. The adopted rule also defines prohibited conduct.

The adopted new §62.80 states the fees to be charged by the Department for registration, renewal, upgrades, duplicate registrations, dishonored payment devices, and criminal history evaluation letters.

The adopted new §62.90 authorizes the imposition of administrative penalties or other sanctions against persons who violate program rules, Chapters 51 or 1952 of the Texas Occupations Code, or any rule or order of the commission or executive director.

The adopted new §62.91 states that the enforcement authority granted under Texas Occupations Code Chapters 51 and 1952 and any associated rules may be used to enforce those chapters and these rules.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the April 21, 2017, issue of the Texas Register (42 TexReg 2051). The deadline for public comments was May 22, 2017. The Department held a public hearing during the public comment period on May 11, 2017. During the 30-day public comment period the Department received comments from three interested parties. The public comments received are summarized below.

Comment--One commenter suggested adding training in communication, customer service delivery, and safety to the education and continuing education requirements. The commenter also suggested increasing the number of supervisees that may be supervised by a registered code enforcement officer.

Department Response--Adding the suggested categories to the program's educational requirements would be a substantive change that would require republication. At this time, the Department did not increase the number of supervisees that may be supervised by a registered code enforcement officer. The Department believes the current standard is adequate to ensure

quality control and training. This issue may be considered at a later date.

Comment--One commenter suggested adding language to §62.10 in order to differentiate between code enforcement officers and code enforcement officers in training. The commenter also suggested adding language to the proposed rules to make it clear that payments and applications may be completed online. The commenter recommended that computer-based training be allowed as a department-approved form of continuing education delivery, and that promotion of health and safety should be added to the program's continuing education requirements. Lastly, the commenter also stated concern that the proposed rules regarding cessation of supervision would be difficult to comply with.

Department Response--The Department made changes to §62.10(6) to make clearer the distinction between code enforcement officers and code enforcement officers in training. In addition, the Department changed the definition in §62.10(4) to correspond with how it is defined in Texas Occupations Code, Chapter 1952. Changes to the continuing education requirements were not made, as those recommendations require substantive changes necessitating republication. The Department's existing rules allow for payments and applications to be submitted online.

Comment--The last commenter asked a question regarding §62.30 and the application of the exemption from registration.

Department Response--Each application and exemption is processed based on licensing requirements established by rule and statute. The Department did not make any changes to the proposed rules based on this comment.

During the rulemaking process the Department conducted a fee analysis for the Code Enforcement Officers program. Section 51.202 of the Texas Occupations Code, requires the Commission to set fees in amounts reasonable and necessary to cover the costs of administering the programs under the Department's jurisdiction. Additionally, Article VIII, Section 2 of the General Appropriations Act requires the Department's revenue cover the cost of the Department's appropriations and other direct and indirect costs. The Department found that the fees in the proposed rules were above the amounts that will be required for the Department to cover its costs. Therefore, the Department has reduced the fee for the code enforcement officer renewal from \$100 to \$75. The decrease in this fee will not adversely affect the administration and enforcement of the program. The reduction in the renewal fee will result in approximately \$22,250 of lost revenue to the state each year.

At its meeting on August 18, 2017, the Commission adopted the proposed rules with changes as recommended by the Department.

### **16 TAC §§62.1, 62.10, 62.65**

The new rules are adopted under Texas Occupations Code, Chapters 51 and 1952, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted are those set forth in Texas Occupations Code, Chapters 51 and 1952. No other statutes, articles, or codes are affected by the adoption.

§62.10. *Definitions.*

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

(1) Act--Occupations Code, Chapter 1952, concerning the registration of code enforcement officers.

(2) Advisory Committee--The Code Enforcement Officers Advisory Committee.

(3) Applicant--A person who applies for registration under the Act.

(4) Code enforcement--The inspection of public or private premises for the purpose of:

(A) identifying environmental hazards, including:

(i) fire or health hazards;

(ii) nuisance violations;

(iii) unsafe building conditions; and

(iv) violations of any fire, health, or building regulation, statute, or ordinance; and

(B) improving and rehabilitating those premises with regard to those hazards.

(5) Code enforcement officer--An agent of this state or a political subdivision of this state who engages in code enforcement. This term does not include an agent of an agency of the federal government.

(6) Code enforcement officer in training (also referred to as Supervisee)--An agent of this state or a political subdivision of this state who possesses less than one year of full-time experience in the field of code enforcement and engages in code enforcement under the supervision of a code enforcement officer. This term does not include an agent of an agency of the federal government.

(7) Commission--The Texas Commission of Licensing and Regulation.

(8) Department--The Texas Department of Licensing and Regulation.

(9) Executive Director--The executive director of the Texas Department of Licensing and Regulation.

(10) Full-time experience--Employment, self-employment, or independent contracting in the field of code enforcement where the regularly assigned duties include code enforcement for a minimum of 32 hours per week.

(11) Registrant--A person registered under the Act.

(12) Supervisor--A code enforcement officer who supervises one or more code enforcement officers in training.

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 August 23, 2017.

TRD-201703297

Brian E. Francis

Executive Director

Texas Department of Licensing and Regulation

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Proposal publication date: April 21, 2017

For further information, please call: (512) 463-8179



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**16 TAC §§62.20 - 62.25, 62.30, 62.70 - 62.72, 62.80, 62.90, 62.91**

The new rules are adopted under Texas Occupations Code, Chapters 51 and 1952, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted are those set forth in Texas Occupations Code, Chapters 51 and 1952. No other statutes, articles, or codes are affected by the adoption.

*§62.80. Fees.*

- (a) Fees paid to the department are non-refundable.
- (b) Registration fees:
  - (1) Code enforcement officer, two-year term--\$100
  - (2) Code enforcement officer in training, one-year term--\$50
- (c) Renewal fees:
  - (1) Code enforcement officer, two-year renewal--\$75
  - (2) Code enforcement officer in training, one-year renewal--\$50
- (d) The fee to upgrade a registration from code enforcement officer in training to code enforcement officer--\$25.
- (e) A duplicate/replacement fee for a registration issued under this chapter--\$25.
- (f) Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to late renewal fees).
- (g) The dishonored/returned check or payment fee is the fee prescribed under §60.82 of this title (relating to dishonored payment device).
- (h) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to criminal history evaluation letters).

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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Brian E. Francis  
Executive Director  
Texas Department of Licensing and Regulation  
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Proposal publication date: April 21, 2017  
For further information, please call: (512) 463-8179

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**CHAPTER 73. ELECTRICIANS**

**16 TAC §73.100**

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 73, §73.100, regarding the Electricians program, with changes to the proposed text as published

in the May 19, 2017, issue of the *Texas Register* (42 TexReg 2619). The rule will be republished.

The Texas Electrical Safety and Licensing Act, §1305.101(a), requires the Commission to adopt, every three years, the revised National Electrical Code (NEC) as the electrical code for the state. The previous rule referenced the 2014 edition of the NEC. The 2017 edition of the NEC was approved by the National Fire Protection Association on August 24, 2016. The adopted amendments are necessary to update the reference to the 2017 edition of the NEC.

The adopted amendments to §73.100 updates the date and code edition for the National Electrical Code. An editorial change is also made for consistency.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the May 19, 2017, issue of the *Texas Register* (42 TexReg 2619). The deadline for public comments was June 20, 2017. The Department received a comment from one individual on the proposed rules during the 30-day public comment period.

Comment--The commenter had questions regarding the journeyman electrician test he took and reciprocity when he relocates.

*Department Response*-- The comment was forwarded to the licensing division for response. The Department did not make any changes to the proposed rules based on this comment.

The Electrical Safety and Licensing Advisory Board (Board) met on July 7, 2017, to discuss the proposed amendments and the public comment received. The board recommended adopting the proposed amendments without changes. At its meeting on August 18, 2017, the Commission adopted the proposed rules with changes to the effective date of the Code due to filing requirements.

The amendments are adopted under Texas Occupations Code, Chapters 51 and 1305, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 1305. No other statutes, articles, or codes are affected by the adoption.

*§73.100. Technical Requirements.*

Effective September 15, 2017, the department adopts the National Electrical Code, 2017 Edition as it existed on August 24, 2016, as adopted by the National Fire Protection Association, Inc.

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 August 23, 2017.

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Brian E. Francis  
Executive Director  
Texas Department of Licensing and Regulation  
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Proposal publication date: May 19, 2017  
For further information, please call: (512) 463-8179

## CHAPTER 75. AIR CONDITIONING AND REFRIGERATION

### 16 TAC §75.110

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 75, §75.110, regarding the Air Conditioning and Refrigeration program, without changes to the proposed text as published in the June 16, 2017, issue of the *Texas Register* (42 TexReg 3055). The rules will not be republished.

The Air Conditioning and Refrigeration Contractor License Law, Tex. Occ. Code §1302.101(a), requires the Commission to adopt rules for the practice of air conditioning and refrigeration contracting that are at least as strict as the standards provided by the Uniform Mechanical Code and the International Mechanical Code. These codes define the standard of practice for ACR contracting, and are used by the Texas Department of Licensing and Regulation (Department) compliance staff to evaluate the mechanical integrity and proper installation and service of air conditioning and refrigeration systems. The adopted amendments are necessary to align the program's applicable codes with currently recognized national standards and to provide clarity and consistency for the Department's licensees.

The adopted amendments to §75.110 update the date and code editions from 2012 to 2015 for the Uniform Mechanical Code, the International Mechanical Code, International Residential Code, and other applicable codes, including the International Energy Conservation Code and International Fuel Gas Code.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the June 16, 2017, issue of the *Texas Register* (42 TexReg 3055). The deadline for public comments was July 27, 2017. The Department received a comment from one individual on the proposed rules during the 30-day public comment period.

Comment--The commenter supports the proposed amendments to the rule.

*Department Response*--The Department appreciates this comment. The Department did not make any changes to the proposed rules based on this comment.

The Air Conditioning and Refrigeration Contractors Advisory Board (Board) met on July 25, 2017, to discuss the proposed amendments and the public comment received. However, the Board lacked a quorum and could not vote on the rule proposal. At its meeting on August 18, 2017, the Commission adopted the proposed rules without changes.

The amendments are adopted under Texas Occupations Code, Chapters 51 and 1302, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 1302. No other statutes, articles, or codes are affected by the proposal.

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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Brian E. Francis

Executive Director

Texas Department of Licensing and Regulation

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Proposal publication date: June 16, 2017

For further information, please call: (512) 463-8179



## CHAPTER 78. MOLD ASSESSORS AND REMEDIATORS

### 16 TAC §§78.1, 78.10, 78.20 - 78.22, 78.24, 78.25, 78.30, 78.40, 78.50, 78.52, 78.54, 78.56, 78.58, 78.60, 78.62, 78.64, 78.66, 78.68, 78.70, 78.72, 78.74, 78.80, 78.85, 78.90, 78.92, 78.100, 78.110, 78.120, 78.130, 78.140, 78.150

The Texas Commission of Licensing and Regulation (Commission) adopts new rules at 16 Texas Administrative Code (TAC), Chapter 78, §§78.1, 78.20, 78.21, 78.24, 78.25, 78.30, 78.40, 78.50, 78.52, 78.54, 78.58, 78.60, 78.66, 78.68, 78.72, 78.90, 78.92, 78.100, 78.120, 78.130, 78.140 and 78.150, regarding the Mold Assessors and Remediators program, without changes to the proposed text as published in the April 21, 2017, issue of the *Texas Register* (42 TexReg 2057). The rules will not be republished.

The Commission also adopts new rules at 16 TAC, Chapter 78, §§78.10, 78.22, 78.56, 78.62, 78.64, 78.70, 78.74, 78.80, 78.85 and 78.110, regarding the Mold Assessors and Remediators program, with changes to the proposed text as published in the April 21, 2017, issue of the *Texas Register* (42 TexReg 2057). The rules will be republished.

The Texas Legislature enacted Senate Bill 202 (S.B. 202), 84th Legislature, Regular Session (2015), which, in part, transferred 13 occupational licensing programs in two phases from the Department of State Health Services (DSHS) to the Commission and the Texas Department of Licensing and Regulation (Department). The Commission and Department completed the Phase 1 transition of seven programs on October 3, 2016.

Under Phase 2, the following six programs are being transferred from DSHS to the Commission and the Department: (1) Laser Hair Removal, Texas Health and Safety Code, Chapter 401, §§401.501 - 401.522; (2) Massage Therapy, Texas Occupations Code, Chapter 455; (3) Code Enforcement Officers, Texas Occupations Code, Chapter 1952; (4) Sanitarians, Texas Occupations Code, Chapter 1953; (5) Mold Assessors and Remediators, Texas Occupations Code, Chapter 1958; and (6) Offender Education Programs, Alcoholic Beverage Code, Chapter 106, §106.115 (Alcohol Education Program for Minors); Transportation Code, Chapter 521, §§521.374 - 521.376 (Drug Offender Education Program); Code of Criminal Procedure, Chapter 42A, Articles 42A.403, 42A.405 and 42A.406 (formerly Chapter 42, Article 42.12, §13(h)) (DWI Education Program); and Code of Criminal Procedure, Chapter 42A, Articles 42A.404, 42A.405, and 42A.406 (formerly Chapter 42, Article 42.12, §13(j)) (DWI Intervention Program). The statutory amendments transferring regulation of these six Phase 2 programs from DSHS to the Commission and the Department will take effect on September 1, 2017.

The new rules were adopted to enable the Commission and the Department to regulate the six Phase 2 programs listed above. The adopted new rules provide for the Department to perform the various functions, including licensing, compliance, and enforcement, necessary to regulate these transferred programs. The effective date of the adopted rules is November 1, 2017. The effective date will coincide with the completion of the transfer of the programs to the Commission and the Department.

The adopted new §78.1 provides the statutory authority for the Commission and the Department to regulate the mold assessors and remediators program.

The adopted new §78.10 creates the definitions to be used in the mold assessors and remediators program.

The adopted new §78.20 explains when credentials are required.

The adopted new §78.21 establishes the basic conditions for all applicants for a credential.

The adopted new §78.22 establishes the renewal requirements.

The adopted new §78.24 provides the qualifications and conditions for taking licensing examinations.

The adopted new §78.25 establishes continuing education requirements and the procedure for verifying compliance with them.

The adopted new §78.30 provides supplemental requirements and clarity regarding the statutory exceptions and exemptions in the mold assessors and remediators program.

The adopted new §78.40 establishes the insurance coverage requirements for licensees.

The adopted new §78.50 details requirements for the mold assessment technician license.

The adopted new §78.52 creates the requirements for the mold assessment consultant license.

The adopted new §78.54 establishes the requirements for a mold assessment company license.

The adopted new §78.56 creates the mold remediation worker registration.

The adopted new §78.58 establishes the requirements for the mold remediation contractor license.

The adopted new §78.60 creates the requirements for a mold remediation company license.

The adopted new §78.62 establishes the requirements for a mold analysis laboratory license.

The adopted new §78.64 details the requirements for a mold training provider accreditation.

The adopted new §78.66 explains the requirements and process for approval of mold training courses and instructors.

The adopted new §78.68 explains the required content of mold training courses.

The adopted new §78.70 establishes responsibilities of all credentialed persons in the mold assessors and remediators program.

The adopted new §78.72 establishes a code of ethics for credentialed persons in the mold assessors and remediators program.

The adopted new §78.74 details recordkeeping and retention requirements.

The adopted new §78.80 establishes all applicable fees in the mold assessors and remediators program.

The adopted new §78.85 provides for and describes the authority of the department to inspect and investigate any person for compliance with the proposed rules.

The adopted new §78.90 provides for administrative penalties and sanctions.

The adopted new §78.92 provides the authority to enforce this chapter and any provision found within.

The adopted new §78.100 explains the minimum required work practices and procedures for mold assessment.

The adopted new §78.110 provides for notifying the department of mold remediation activities.

The adopted new §78.120 explains the minimum required work practices and procedures for mold remediation.

The adopted new §78.130 details mold remediation requirements for heating, ventilation and air conditioning systems.

The adopted new §78.140 establishes the minimum requirements for post-remediation assessment and clearance.

The adopted new §78.150 details requirements for photographs, certificates of mold damage remediation and duties of property owners following mold remediation projects.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the April 21, 2017, issue of the *Texas Register* (42 TexReg 2057). The deadline for public comments was May 22, 2017. The Department held a public hearing during the public comment period on May 11, 2017. During the 30-day public comment period the Department received comments from the following groups and associations: American Industrial Hygiene Association (AIHA); Enviro-Con Services, Inc.; GEBCO Associates; Mold Inspection Sciences Texas; Moldlab, Ltd.; Moody Labs; Occupational-Environmental Control, Inc.; and Sun City Analytical, Inc., four of whom made comments during the public hearing.

**Comment--**One commenter recommended that the provision in §78.25(f) that allows a Mold Assessment Technician (MAT) to take a continuing education course offered for either a MAT or a Mold Assessment Consultant (MAC) to meet the MAT continuing education requirement should be removed. A second commenter advocated keeping this provision as written.

**Department Response--**The Department disagrees with removing this provision because it allows MATs to choose to take the MAC course to fulfill the continuing education requirement if, for example, there is no MAT course available. The rule does not require accredited training providers to allow MATs to take MAC continuing education courses, nor does it permit providers to combine the MAT and MAC courses or to issue MAT continuing education certificates to students who take the MAC continuing education course. Further, the rule does not require any MAT to take a MAC continuing education course, but simply provides a choice to do so. The Department did not make any changes to the rule in response to these comments.

**Comment--**One commenter stated the rule is not clear about whether mold training courses expire.

*Department Response*--Mold training courses do not expire but the Department's requirements as to whether a course will be accepted to fulfill training requirements for renewal of a credential depends in part upon the date on which a course is completed. The rule requires that date to be included on all training certificates. Accredited training providers are not required to verify whether persons taking training courses can successfully use the training to qualify for a new or renewal credential. The Department did not make any changes to the rule in response to this comment.

*Comment*--One commenter recommended that training providers should be required to submit schedules of the courses they will offer or this will hamper auditing and enforcement to ensure courses are valid.

*Department Response*--The Department is authorized to conduct audits of training providers and will respond to complaints regarding Mold Training Providers (MTP). The Department did not make any changes to the rule in response to this comment.

*Comment*--One commenter stated the term "license" is more appropriate than "accreditation" for MTPs and the terminology in the rules and the type of credential should be changed accordingly.

*Department Response*--The law provides for accreditation but not licensing of MTPs in Occupations Code §1958.106. A change to the statute would be necessary to move from an accreditation to a license. The Department did not make any changes to the rule in response to this comment.

*Comment*--One commenter recommended that the content of continuing education courses should not be limited to that currently required by the rules and offered by MTPs, but should be expanded to allow training in more areas related to air quality and industrial hygiene in training courses or other types of venues. A second commenter recommended that only continuing education courses offered by Department-accredited MTPs should be acceptable to meet training requirements. This commenter referenced the continuing education requirements in 16 TAC Chapter 59.

*Department Response*--The Department evaluates the content of required training courses on an ongoing basis and makes needed changes and upgrades accordingly. However; modifying the required content of the mold training courses, or broadening the continuing education requirements to encompass other providers and non-mold related content, is outside of the scope of this rulemaking. Licensees of course are encouraged to take additional training and to recommend to the Department new and relevant content for training courses. MTPs may likewise obtain approval from the Department to update or supplement the content of the courses they provide. The continuing education requirements in 16 TAC Chapter 59 are applicable to only some of the Department's programs and the mold program is not among them. The Department did not make any changes to the rule in response to these comments.

*Comment*--One commenter suggested the definition of "training hours" in §78.10(45) should be amended to include lunch as part of the eight-hour training day.

*Department Response*--The Department may explore the demand for the option of a "working lunch" during the training day in the future, but such a change is outside the scope of this rulemaking. The Department did not make any changes to the rule in response to this comment.

*Comment*--One commenter recommended the requirements for mold training instructors in §78.66(e), should include an option that does not require hands-on experience in mold-related activities in order to teach mold training courses if the person is otherwise highly qualified. If a person has experience in directly related fields and is a professional, such as an architect, particularly a specialist in building sciences, a building envelope specialist, or professional engineer, then that person should be considered qualified to teach mold training courses even if the person does not have hands-on mold-related activity experience. The commenter suggests textual amendments to §78.66(e)(2) to so expand the options for qualification as a MTP instructor.

*Department Response*--The instructor qualifications may need to be evaluated to determine if the recommended change should be made. However, amendment of the instructor qualifications is outside the scope of this rulemaking. The Department did not make any changes to the rule at this time in response to this comment.

*Comment*--One commenter suggested that the mold program should have an advisory committee and the commenter suggests a change to the statute to accomplish this, or to form one under the authority provided in Government Code §2110.002 {sic} (2110.0012).

*Department Response*--No provision for the creation of an advisory committee for the mold assessors and remediators program currently exists in Occupations Code, Chapter 1958. The formation of an advisory committee would represent a significant change to the mold licensing program, and would be outside of the scope of this rulemaking. The Department did not make any changes to the rule in response to this comment.

*Comment*--One commenter stated that §78.70(c) requires the Consumer Mold Information Sheet (CMIS) to be provided to the property owner or the property owner's designee, but it is sometimes not possible to determine who is the property owner or its designee. The commenter recommends amending the requirement by adding "if known." A second commenter states that the CMIS should be required to be provided only to the client and not to the property owner.

*Department Response*--The requirement for provision of the CMIS to both the client and the property owner is unchanged from this requirement in the DSHS rules. The provision of the CMIS to the property owner, especially when the client is a tenant, serves an important purpose by ensuring all parties are aware of mold-related activities to be conducted at a property and the choices available to them. The Department did not make any changes to the rule in response to this comment.

*Comment*--One commenter stated the meaning of "first contact" is unclear as written in proposed §78.70(c)(1) which requires the CMIS to be provided on the earlier of the first contact with the client, potential client, property owner or its designee, or at least one calendar day before the initiation of mold-related activity.

*Department Response*--"Contact" should be interpreted in the usual sense of the word. The Department does not prohibit any delivery method for providing the CMIS, including hand delivery, mail or delivery service, or any electronic method. If the first contact and the initiation of mold related activities occurs on the same day, then the provision of the CMIS on that day is authorized by the rule if it precedes the initiation of mold-related activities. The purpose of the CMIS is to provide information to the person before a decision is made regarding engaging the licensee for services. A person who declines the services of

the licensee need not be considered a "potential client" for purposes of providing the CMIS. The Department did not make any changes to the rule in response to this comment.

Comment--One commenter stated the requirement to provide the CMIS applies only to mold remediation companies and not to mold consulting companies.

*Department Response*--The requirement to provide the CMIS is located in §78.70(c) and applies to all individual and business entity mold licensees and all mold-related assessment and remediation activities. The Department did not make any changes to the rule in response to this comment.

Comment--One commenter stated that the requirement in §78.62(c)(4) for all individuals who will analyze mold samples to have a bachelor's degree in microbiology or biology in addition to the required training and experience is burdensome and unnecessary. The commenter recommends requiring the bachelor's degree "or" the training and experience as provided in §78.62(c)(4).

*Department Response*--Section 78.62(c) is identical to the existing DSHS requirement. The need for changes to the required minimum qualifications of Mold Analysis Laboratory (LAB) personnel may be evaluated by the Department as part of its administration of the mold licensing program as it begins operation but is outside the scope of this rulemaking. The Department did not make any changes to the rule in response to this comment.

Comment--One commenter suggested §78.62(c)(2) is not clear as to the meaning of "a program deemed equivalent by the department for the preparation and analysis of mold." The criteria that will be applied to determine if a program is equivalent should be defined.

*Department Response*--The Department will review the equivalency of an accreditation or certification body to the AIHA Environmental Microbiology Laboratory Accreditation Program on a case-by-case basis. The Department's Compliance Division makes these determinations. The Department did not make any changes to the rule in response to this comment.

Comment--One commenter stated the word "accredited" should be changed to "certified" in §78.62(c)(3).

*Department Response*--The Department agrees and has made this change to the rule and additional corresponding changes in §78.62(a)(1), (f)(4), (f)(4)(A), and (f)(4)(B).

Comment--One commenter recommended that a requirement for proof of ongoing proficiency for applicants for a LAB license should be added to rule §78.62(e). A second commenter recommends that the mold rules should require LABs to demonstrate competency and proficiency in each type of analysis they conduct: direct exam analysis, viable culture analysis, or both.

*Department Response*--Rule §78.62(e)(2) requires LAB license applicants to demonstrate that they meet one of the criteria under 78.62(c) to qualify for an initial LAB license. Rule §78.62(f) requires the LAB to maintain any accreditation or certification under §78.62(c) and to notify the department and cease providing services if it does not maintain its accreditation or certification. Further, all renewal applicants must again demonstrate compliance with the qualification requirement in §78.62(c). The Department acknowledges that some of the methods by which LABS qualify for licensure do not have requirements to demonstrate ongoing proficiency and will take this under consideration as it commences to regulate LABs. The Department notes that there

is no history of complaints regarding LAB proficiency. The addition of the recommended competency and proficiency requirements is outside the scope of this rulemaking. The Department did not make any changes to the rule in response to these comments.

Comment--One commenter stated the definition of "mold analysis" in §78.10(23) is too specific for the analysis of general air samples collected using Alergenco-D/Air-O-Cell-like cassettes, which do not necessarily allow spore identification to the genus level.

*Department Response*--The Department welcomes additional information about the substance of this comment because the complaint is unclear. A LAB may specify the types of media on which collection should not be made if use of that media is unsatisfactory for analysis. The definition identifies the activities that are considered to be mold analysis but does not establish minimum requirements for mold analysis. Punctuation has been added to clarify the text of the definition.

Comment--Two commenters stated that Certified Industrial Hygienists should be exempted from the additional educational and training requirements proposed in the rule.

*Department Response*--The Department did not change the educational or training requirements from those currently required by DSHS. The comments do not specify which requirements should be removed or waived for the different credentials available in the mold program if a person is a Certified Industrial Hygienist. The Department welcomes further information on which to evaluate the qualifications of Certified Industrial Hygienists and to determine whether certain rule requirements could be reasonably removed or made inapplicable to them in the future. Such changes are, however, outside the scope of this rulemaking so no change has been made to the rule in response to the comments.

Comment--Two commenters recommended that the term "certification as an industrial hygienist" should be replaced with "Certified Industrial Hygienist" in the rule.

*Department Response*--The Department anticipates examining this certification and the title of Certified Industrial Hygienist to determine if this change would be appropriate, but it is outside the scope of this rulemaking. The Department did not make any changes to the rule in response to this comment.

Comment--One commenter stated the requirement for those licensed to perform mold remediation and assessment to maintain an office in Texas should be eliminated.

*Department Response*--Texas Occupations Code §1958.157 requires all licensees to maintain an office in Texas and, therefore, can only be removed by the Texas Legislature. The Department did not make any changes to the rule in response to this comment.

Comment--One commenter stated the mold law in the state of Texas should be rescinded in its entirety.

*Department Response*--The mold statute, Occupations Code, Chapter 1958, requires the Department to regulate mold assessors and remediators. The statute can only be repealed by the Texas Legislature. The Department did not make any changes to the rule in response to this comment.

Comment--One commenter stated the funds collected by DSHS from persons credentialed in the mold assessors and remediators program are required by law to follow the program and need

to be accounted for. The funds must be used for the purpose for which they were collected and may not be diverted or misappropriated.

*Department Response*--The Department's rules for the mold assessors and remediators licensing program govern the operation of the program in relation to licensing, qualifications, work practices, enforcement, and other aspects of the regulation of credentialed persons. The collection, handling, and use of revenues received from persons credentialed under the mold program is regulated through other avenues and is not a subject of the program's administrative rules. Therefore, this subject is outside of the scope of this rule. The Department did not make any changes to the rule in response to this comment.

*Comment*--One commenter recommended the rule should be modified to allow a thorough visual inspection to be sufficient as the post-remediation clearance criteria, with the use of microbial air samples as the secondary verification method.

*Department Response*--The certificate of mold remediation that must be provided to the property owner as described in Occupations Code, §1958.154 requires a statement that the mold has been remediated based on visual, procedural, and analytical evaluation. Therefore, the clearance criteria may not be limited only to the visual inspection. The Department did not make any changes to the rule in response to this comment.

*Comment*--One commenter suggested the rule should include references to technical publications that describe industry accepted methods for completing thorough mold remediation projects. The proposed regulation refers to "nationally accepted" and "nationally recognized" analytical methods in §78.100(d)(1) and §78.100(i)(1). These terms should be replaced with "industry accepted" or "industry recognized."

*Department Response*--The Department does not typically recommend third party materials and leaves it to the discretion of its licensees to evaluate and use these sources in keeping with their own professional judgment. As the Department implements the mold assessors and remediators program, it will review and evaluate the technical requirements and criteria, and information about analytical methods, techniques, standards, and practices as necessary to examine the need for revision to the program rules. However, these types of changes are outside the scope of this rulemaking. The Department did not make any changes to the rule in response to this comment.

*Comment*--One commenter suggested that §78.100(d) needs to include photographs taken during the assessment and approximate quantification in square feet of the mold contamination.

*Department Response*--The Department agrees that the minimum requirements for performance of mold assessment should be evaluated to determine if the recommended changes would have utility. However, amendment of these requirements is outside the scope of this rulemaking. The Department did not make any changes to the rule at this time in response to this comment.

After internal discussions, the Department has modified the rule text in §78.22(d)(3) and §78.56(b)(3) and (d)(2) to reflect that mold remediation workers must supply documentation that their employer carries the required insurance only if requested by the Department.

In addition, several internal discussions were had relating to notifications of mold remediation activity. The Department has confirmed that an online notification system will be operational when the mold assessors and remediators program transfers to the

Department. Textual changes have been made to enhance the understandability and consistency of the rules relating to mold remediation notifications. The online notification system eliminates the need for licensees to notify by alternative methods and to follow up to confirm receipt of notifications. Consequently, some of the requirements related to notification submission have been updated to remove outdated requirements and to be more specific. The proposed rule indicated that notifications must be made by telephone, in writing, or in a manner specified by the department. The text changes now reflect that the method the Department will use to accept notifications and amendments of notifications will be its online system. The rule text regarding emergency notifications is amended to simplify and clarify that all usual notification requirements apply to an emergency except for the timing of the initial notification.

During the rulemaking process the Department conducted a fee analysis for the Mold Assessors and Remediators program. Section 51.202 of the Texas Occupations Code requires the Commission to set fees in amounts reasonable and necessary to cover the costs of administering the programs under the Department's jurisdiction. Additionally, Article VIII, Section 2 of the General Appropriations Act requires the Department's revenue cover the cost of the Department's appropriations and other direct and indirect costs. The Department found that the fees in the proposed rules are above the amounts that will be required for the Department to cover its costs. Therefore, the Department has reduced the fees for all new and renewal credentials from between 10% and 25%, or from \$10 to \$250 per credential. In addition, the fee for notification of a mold remediation project that is not in an owner-occupied residential dwelling has been reduced from \$100 to \$25, consistent with the unchanged \$25 notification fee for projects in owner-occupied residential dwelling units. The decreased fees will not adversely affect the administration and enforcement of the program. The reduction in the notification and renewal fees will result in approximately \$210,150 of lost revenue to the state each year.

At its meeting on August 18, 2017, the Commission adopted the proposed rules with changes as recommended by the Department.

The new rules are adopted under Texas Occupations Code, Chapters 51 and 1958, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 1958. No other statutes, articles, or codes are affected by the adoption.

#### *§78.10. Definitions.*

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

(1) Accredited training program--A training program that has been accredited by the department to provide training for persons seeking licensure or registration under this chapter.

(2) Act--The Texas Occupations Code, Chapter 1958, concerning mold assessment and remediation.

(3) Allied field--Mold assessment, mold remediation, and any field whose principles and practices are applicable to mold assessment or mold remediation, including asbestos abatement, lead abatement, industrial hygiene, building sciences, public health, and environmental remediation.

(4) Assessor--A person who conducts mold assessment as defined in this section and who is licensed under this chapter as a mold assessment technician, mold assessment consultant, or mold assessment company.

(5) Building sciences--The field of study covering the design, construction, management, and performance of building systems, including structures, enclosures, electrical and mechanical systems, environmental systems (such as temperature and moisture control), safety systems (such as fire suppression and alarms), lighting, acoustics, and diagnosis and correction of problems with building systems.

(6) Certificate of Mold Damage Remediation--A certificate adopted by the Texas Department of Insurance, commonly referred to as Certificate of Mold Damage Remediation and Form MDR-1.

(7) Commission--The Texas Commission of Licensing and Regulation.

(8) Consumer Mold Information Sheet--A document prepared and made available by the department that describes the persons who are required to be licensed under this chapter and provides information on mold assessment and mold remediation, including how to contact the department for more information or to file a complaint.

(9) Containment--A component or enclosure designed or intended to control the release of mold or mold-containing dust or materials into surrounding areas in the building. The broad category of containment includes such sub-categories as walk-in containment, surface containment (such as plastic sheeting), and containment devices (such as wall-mounted glove boxes).

(10) Containment area--An area that has been enclosed to control the release of mold or mold-containing dust or materials into surrounding areas.

(11) Contiguous--In close proximity; neighboring.

(12) Contiguous square feet--See "Total surface area of contiguous square feet."

(13) Credential--A license, registration, or accreditation issued under this chapter.

(14) Department--The Texas Department of Licensing and Regulation.

(15) Employee--An individual who is paid a salary, wage, or remuneration by another person or entity for services performed and over whom the person or entity exerts supervision or control as to the place, time, and manner of the individual's work. A contractor or subcontractor who is performing work under a contractual agreement with a person is not an employee of the person unless the agreement specifies otherwise.

(16) Executive director--The executive director of the department.

(17) Facility--Any institutional, commercial, public, governmental, industrial or residential building.

(18) Indoor air--Air within the envelope of a building, including air in spaces normally occupied by persons in the building but excluding air in attics and crawl spaces that are vented to the outside of the building.

(19) Indoor mold--Mold contamination that was not purposely grown or brought into a building and that has the potential to affect the indoor air quality of the building.

(20) License--Any license issued under this chapter. The term "license" does not include a registration, accreditation, or approval issued under this chapter.

(21) Mold--Any living or dead fungi or related products or parts, including spores, hyphae, and mycotoxins.

(22) Managing agent--A company or individual that manages a residential or commercial building for an owner.

(23) Mold analysis--The examination of a sample collected during a mold assessment for the purpose of:

(A) determining the amount or presence of, or identifying the genus or species of, any living or dead mold or related parts (including spores and hyphae) present in the sample; or

(B) growing or attempting to grow fungi for the purposes of subparagraph (A); or

(C) identifying or determining the amount or presence of any fungal products, including but not limited to mycotoxins and fungal volatile organic compounds, present in the sample.

(24) Mold analysis laboratory--A person, other than an individual, that performs mold or mold-related analysis on a sample collected to determine the presence, identity, or amount of indoor mold in the sample.

(25) Mold assessment--Activity that involves:

(A) an inspection, investigation, or survey of a dwelling or other structure to provide the owner or occupant with information regarding the presence, identification, or evaluation of mold; or

(B) the development of a mold management plan or mold remediation protocol; or

(C) the collection or analysis of a mold sample.

(26) Mold assessment report--A document prepared by a licensed mold assessment consultant or licensed mold assessment technician for a client that describes any observations made, measurements taken, and locations and analytical results of samples taken by an assessment consultant or by an assessment technician during a mold assessment. An assessment report can be either a stand-alone document or a part of a mold management plan or mold remediation protocol prepared by a mold assessment consultant.

(27) Mold management plan--A document prepared by a licensed mold assessment consultant for a client that provides guidance on how to prevent and control indoor mold growth at a location.

(28) Mold-related activities--The performance of mold assessment, mold remediation or any other related activities.

(29) Mold remediation--The removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold or mold-contaminated matter that was not purposely grown at a location. Preventive activities include those intended to prevent future mold contamination of a remediated area, including applying biocides or anti-microbial compounds.

(30) Mold remediation protocol (mold remediation work analysis) --A document, prepared by a licensed mold assessment consultant for a client, that specifies the estimated quantities and locations of materials to be remediated and the proposed remediation methods and clearance criteria for each type of remediation in each type of area for a mold remediation project.

(31) Mold remediation work plan--A document, prepared by a licensed mold remediation contractor that provides specific in-

structions and/or standard operating procedures for how a mold remediation project will be performed.

(32) Office--A stationary physical location assigned a street address by the United States Postal Service, where a licensee or an employee of a licensee may be contacted to conduct business related to mold assessment and/or mold remediation.

(33) Person--An individual, corporation, company, contractor, subcontractor, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, governmental entity, or any other association of individuals.

(34) Project--All activities that involve mold-related activities in a building or designated area of a building for which a specific start-date and a specific stop-date is provided that covers the mold remediation.

(35) Remediator--A person who performs mold remediation as defined in this section and who is credentialed under this chapter as a mold remediation worker, mold remediation contractor, or mold remediation company.

(36) Residential dwelling unit--A detached single-family dwelling; an attached single-family dwelling in a building that contains two or more separate single-family dwellings; or a bedroom in group housing. Examples of residential dwelling units include single homes, mobile homes (house trailers), duplexes, apartments, and condominiums. In group housing, such as dormitories, fraternity or sorority houses, and boarding houses, each bedroom is a residential dwelling unit.

(37) Residential property--A property containing one or more residential dwelling units intended to provide living quarters for more than a transitory period, including a residential property that is vacant or under construction. A residential property includes dormitories and employee housing in a non-residential setting (e.g., staff housing at an institutional or commercial facility). Residential properties do not include:

(A) lodgings (such as hotels and motels) that rent units on a transient basis;

(B) institutional facilities that provide care or oversight for residents or inmates (such as hospitals, nursing homes, homes for children with physical or mental disabilities, mental institutions, jails, prisons and detention centers); and

(C) former residential properties that do not currently provide living quarters (such as houses converted into shops or restaurants).

(38) Responsible person--An employee or principal designated by a licensed mold assessment company, mold remediation company, or mold analysis laboratory or by an accredited mold training provider as responsible for its operations and compliance with rules concerning mold-related activities or mold-related training.

(39) Routine cleaning--Cleaning that is done on a regular basis and in a regular course of procedures.

(40) Start-date--The date on which a mold remediation begins. Preparation work is not considered mold remediation.

(41) Stop-date--The date following the day on which final clearance for a mold remediation project is achieved.

(42) Supervise--To direct and exercise control over the activities of a person.

(43) Survey--An activity undertaken in a building to determine the presence, location, or quantity of indoor mold or to determine

the underlying condition(s) contributing to indoor mold contamination, whether by visual or physical examination or by collecting samples of potential mold for analysis.

(44) Total surface area of contiguous square feet--The contiguous area of surface material that needs to be cleaned or removed to remediate visible mold contamination.

(45) Training hours--Hours spent in classroom instruction, hands-on activities, and field trips, including time used for course tests and brief breaks but not including scheduled lunch periods.

(46) Visible--Exposed to view; capable of being seen.

(47) Work analysis--A mold remediation protocol.

(48) Work plan--A mold remediation work plan.

(49) Working days--Monday through Friday, including holidays that fall on those days.

#### §78.22. Renewals.

(a) A person seeking to renew a license, registration, or accreditation shall submit a renewal application before the credential expires.

(b) Each person is responsible for renewing the credential before the expiration date and shall not be excused from paying additional fees or penalties. Failure to receive notification of expiration from the department before the expiration date of the credential shall not excuse failure to apply for renewal or late renewal.

(c) An applicant for renewal of a mold assessment technician, mold assessment consultant, or mold remediation contractor license or for renewal of a mold remediation worker registration must successfully complete a required continuing education course as specified in §78.25 before applying for renewal. The applicant must complete the continuing education course within the two-year term of the credential preceding the expiration date of the credential.

(d) To renew a credential, a person must:

(1) submit a complete renewal application on a department-approved form or in a manner specified by the department;

(2) if renewing an individual license or registration:

(A) successfully pass a criminal history background check;

(B) complete continuing education training as specified in §78.25; and

(C) comply with the continuing education audit process described under §78.25 as applicable;

(3) demonstrate compliance with the requirement for insurance coverage under §78.40, if applicable;

(4) demonstrate compliance with all other applicable requirements under this chapter for the credential being renewed; and

(5) pay the renewal fee required under §78.80.

(e) Credentials must be renewed every two years.

(f) A temporary mold remediation worker registration issued under §78.56(c) may not be renewed.

(g) A person shall not perform any mold-related activity with an expired credential.

#### §78.56. Mold Remediation Worker Registration.

(a) Registration requirement. An individual must be registered as a mold remediation worker to perform mold remediation, except that



an individual licensed under §78.58 is not required to be separately registered under this section.

(b) Eligibility for registration. To obtain a mold remediation worker registration, a person must:

- (1) successfully pass a criminal history background check;
- (2) be at least 18 years old at the time of application;
- (3) demonstrate that the person's employer, if any, is in compliance with the requirement for insurance coverage under §78.40 if requested by the department;
- (4) complete a mold training course as described in §78.68(d); and
- (5) pay the fee required under §78.80.

(c) Temporary registration. The department may issue a temporary registration to an applicant for a mold remediation worker registration if the person:

- (1) has not been convicted of a criminal offense; and
  - (2) meets the requirements of subsection (b)(2)-(5).
- (3) A temporary registration is valid for 21 days and may not be renewed.

(d) Applications. Unless otherwise indicated, an applicant must submit all required information and documentation on department-approved forms or in a manner specified by the department. In addition to fulfilling the requirements in §78.21, an applicant must submit the following required documentation:

- (1) a copy of a course completion certificate for the applicable training course as described in §78.68(d); and
- (2) proof that the applicant's employer, if any, is in compliance with the insurance requirement for licensees specified in §78.40 if requested by the department.

(e) Responsibilities. In addition to all applicable responsibilities in this chapter, a registered mold remediation worker shall use remediation techniques specified in the project mold remediation work plan.

(f) Prohibitions. Registered mold remediation workers are prohibited from:

- (1) performing mold remediation except under the supervision of a licensed remediation contractor; and
- (2) engaging in any mold-related activity requiring licensing as a remediation contractor under this chapter.

#### §78.62. *Mold Analysis Laboratory License.*

(a) Licensing requirement. A person must be licensed in compliance with the provisions of this section to engage in activities listed under subsection (b). A person licensed under this section is not required to be separately licensed under §78.54.

(1) Branch offices that perform mold analysis must fulfill the same equipment and operational standards as the main office that has been licensed and must comply with subsection (c) for the types of analysis they will be performing.

(2) A licensed mold analysis laboratory shall:

- (A) designate one or more individuals as responsible persons;
- (B) not transfer the license to any other person, including to any company that has bought the licensed entity;

(C) apply for a name change on the license within 30 calendar days after a change in name only; and

(D) obtain a new license before performing any mold-related activities when the transfer of a licensed person occurs.

(b) Scope. A person licensed under this section is authorized to analyze samples collected during mold-related activities to:

- (1) determine the presence, identity, or amount of mold present;
- (2) provide any other information regarding the sample that the submitter requests; and
- (3) obtain any other information that the laboratory deems useful.

(c) Qualifications. A person must submit documentation showing that:

(1) the laboratory is accredited by the American Industrial Hygiene Association under the Environmental Microbiology Laboratory Accreditation Program (EMLAP); or

(2) the laboratory is accredited or certified by a program deemed equivalent by the department for the preparation and analysis of mold; or

(3) all individuals who will analyze mold samples are certified by the Pan-American Aerobiology Certification Board or a program deemed equivalent by the department, if the laboratory will analyze only non-culturable samples; or

(4) the laboratory meets the following requirements:

(A) all individuals who will analyze mold samples:

(i) have at least a bachelor's degree in microbiology or biology;

(ii) have successfully completed training in mold analysis offered by the McCrone Research Institute or by a program deemed equivalent by the department, including receiving a training certificate; and

(iii) have at least three years of experience as a mold microscopist; and

(B) mold analysis activity at the laboratory is overseen by a full-time mycologist or microbiologist with:

(i) an advanced academic degree; or

(ii) at least two years of experience in mold analysis.

(d) Eligibility for licensing. To obtain a mold analysis laboratory license, a person must:

(1) comply with subsection (c);

(2) comply with the requirement for insurance coverage under §78.40; and

(3) pay the fee required under §78.80.

(e) Applications. Unless otherwise indicated, an applicant must submit all required information and documentation on department-approved forms or in a manner specified by the department. In addition to fulfilling the requirements in §78.21, an applicant must submit the following required documentation:

(1) proof of compliance with the insurance requirement for licensees specified in §78.40;

(2) evidence acceptable to the department that the laboratory meets one of the qualification requirements under subsection (c);

(3) the name, address, and occupation of each person that has an ownership interest of 10% or more in the laboratory; and

(4) the name of each individual designated by the applicant as a responsible person.

(f) Responsibilities. In addition to the requirements of §78.70 and all other applicable responsibilities in this chapter, the mold analysis laboratory shall:

(1) provide to a client, as applicable, details of analysis methods used, amounts (percentages) analyzed, raw counts for each genus of mold that is identified, magnification used for counting and identifying mold, and culture media and conditions used;

(2) provide the department-issued license number of the laboratory on its analysis reports;

(3) ensure that all individuals who will conduct mold analysis are properly trained in analysis techniques; and

(4) maintain accreditation or certification required under subsection (c). A licensed mold assessment laboratory that loses the required accreditation or certification must:

(A) provide to the department written notification of a change in accreditation or certification status within 30 calendar days after the change; and

(B) cease providing services until the accreditation or certification is reinstated or it otherwise comes into compliance with subsection (c).

#### §78.64. Mold Training Provider Accreditation.

(a) Accreditation requirement. A person must be accredited as a mold training provider to offer mold training courses that are prerequisites for licensing.

(b) Authorizations and Conditions. The following shall apply to issuance of accreditations under this section.

(1) Accredited training providers:

(A) may not transfer the accreditation to any other person, including to any company that has bought the accredited entity; and

(B) must apply for a name change within 30 calendar days after a change in the name of the accredited entity only.

(2) A person must obtain accreditation before providing training when the transfer of an accredited person occurs.

(3) A person shall not advertise, offer, or provide a training course for fulfillment of requirements for a license or renewal of a license under this chapter unless the department or the department's designee has approved the course under §78.66.

(A) Accredited training providers may offer, without department approval, mold remediation worker training courses and other courses relevant to mold-related activities, including, but not limited to, courses on respirator training and compliance.

(B) Accredited training providers shall use only approved instructors for mold remediation worker training courses.

(4) Accredited training providers must offer approved courses as described below.

(A) Each training course shall address only one license type and shall not be combined with other areas of licensure.

Initial training courses shall not be combined with continuing education courses. This prohibition against combined training applies to hands-on training sessions as well as other aspects of the course.

(B) Training providers shall conduct each course in one language throughout and a course shall not be combined with the same course taught in another language. A training provider may offer a course in a language other than English if all instructors and guest speakers are fluent in that language and all books, training materials, and course tests are in that language.

(C) Accredited mold training providers are authorized to offer:

(i) a mold assessment technician or mold assessment consultant training course to persons applying for a mold assessment technician license; and

(ii) a mold assessment technician or mold assessment consultant continuing education training course to persons renewing a mold assessment technician license.

(5) Training providers shall not conduct any approved course for more than eight training hours (including hands-on portions) in a calendar day.

(6) A training provider must require instructors and guest speakers to present in person during at least 50% of the classroom instruction and all of the hands-on instruction. The training provider may allow an instructor or guest speaker to use training films and videotapes, but audiovisual materials shall not be used as substitutes for the required in-person presentations or the hands-on instruction.

(7) Courses requiring hands-on practical training must be presented in an environment that permits each student to have actual experience performing tasks associated with the mold-related activity.

(8) The maximum number of students in a lecture session shall be 40. Hands-on training sessions shall maintain a student-to-instructor ratio of not more than 15 to one and must be conducted so that the instructor is able to assist and evaluate each student individually. Field trips shall maintain a student-to-instructor ratio of not more than 40 to one.

(9) Accredited training providers shall conduct approved training courses in facilities acceptable as classrooms and conducive to learning. The facilities must have restrooms available for the students.

(10) Course instructors shall maintain an attendance record for each course and take attendance at the beginning of each four-hour instruction segment. A student who is absent from more than 10% of the course instruction, including hands-on sessions and field trips, is ineligible to complete the course.

(11) An accredited training provider shall verify and keep a written record of the student scores on each course test.

(A) The training provider shall have a written policy concerning the administration of tests, including allowing only one re-test per student for each course.

(B) The use of the same questions for both the original and re-test is prohibited.

(C) Oral course tests are not allowed; however, a training provider may read the written test questions and possible answers to a student who must then mark his or her answer on an answer sheet.

(D) If a student fails the re-test, the student must repeat the course and pass a new test.

(12) An individual instructor shall not train himself/herself to qualify for a license or a registration.

(c) Qualifications. To qualify for an accreditation, a training provider must:

(1) have a written policy concerning refunds and cancellations including cancellation procedures in all languages in which training is offered;

(2) provide the refund and cancellation policy to students before payment of fees;

(3) employ a mold training manager who meets at least one of the following requirements in (A), (B), or (C):

(A) at least two years of experience, education, or training in teaching adults;

(B) a bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, education, or business administration or program management;

(C) at least two years of experience in managing an occupational health and safety training program specializing in environmental hazards; and

(D) has demonstrated experience, education, or training in mold assessment or remediation, lead or asbestos abatement, occupational safety and health, or industrial hygiene;

(4) provide for each course a qualified principal instructor who is:

(A) approved by the training provider; and

(B) meets the requirements under §78.66; and

(5) develop and implement a plan to maintain and improve the quality of the training program. This plan shall contain at least the following elements:

(A) procedures for periodic revision of training materials and the course test to reflect innovations in the field; and

(B) procedures for the training manager's annual review of instructor competency.

(d) Eligibility for accreditation. To obtain a mold training provider accreditation, a person must:

(1) comply with subsection (c); and

(2) pay the fee required under §78.80.

(e) Applications. Unless otherwise indicated, an applicant must submit all required information and documentation on department-approved forms or in a manner specified by the department. In addition to fulfilling the requirements in §78.21, an applicant must submit the following required documentation:

(1) the name, address, and occupation of each person that has an ownership interest of 10% or more in the applicant;

(2) a complete application for approval of at least one training course; and

(3) a description of the training provider's organization, including:

(A) the address of its central office;

(B) the names and business addresses of its principals;

(C) a statement of any affiliation with other mold-related companies doing business in Texas;

(D) a listing of the courses to be offered; and

(E) the identity of the qualified staff member designated as the mold training manager.

(f) Responsibilities. In addition to the requirements of §78.70 and all other applicable responsibilities in this chapter, an accredited mold training provider shall:

(1) present to students all course information and material approved by the department;

(2) furnish appropriate equipment in good working order and in sufficient quantities for each training session in which equipment is required;

(3) maintain the hands-on skills assessment to ensure that it accurately evaluates student performance of the work practices and procedures associated with the course topics contained in §78.68;

(4) maintain the validity and integrity of each course test to ensure that it accurately evaluates the student's knowledge and retention of the course topics;

(5) at the conclusion of each training course, provide to each student who successfully completes the course and passes the required course test, if applicable:

(A) a course completion certificate as described in §78.66(c); and

(B) information regarding the state application and examination process, as applicable;

(6) submit to the department within seven calendar days after the completion date of each course the names and number identifiers of each student who attended the course, on a department-approved form or in a manner specified by the department;

(7) make all records required under this section available for inspection by the department or the department's designee immediately upon conclusion of a course and the course test;

(8) document that each person who receives a certificate has successfully completed a training course in accordance with §78.68 and has achieved a passing score on the written test, if applicable;

(9) for each mold training course for a license or registration, maintain a file that includes:

(A) the training course name;

(B) the date the course was provided;

(C) the subject area of the course taught;

(D) the names of all instructors and guest speakers who taught the course;

(E) a roster of all students in the course;

(F) the names of students receiving certificates;

(G) the certificate numbers; and

(H) the expiration date of the training, if applicable; and

(10) for each training course for a mold license, maintaining in the file:

(A) a copy of the course test;

(B) each student's identified, graded answer sheet;

(C) the date and location where the test was administered; and

(D) the name of the test proctor; and

(11) ensure that all information from the training course and course test, if applicable, corresponds to the information on each person's course completion certificate.

(g) Inspections and audits. The department or its representative or designee may audit any training course. Training providers shall permit the department or its representatives or designees to attend, evaluate, and monitor any training course, without charge or advance notice, to ensure compliance with this chapter.

*§78.70. Responsibilities of Credentialed Persons.*

(a) Persons who are licensed, registered, or accredited under this chapter shall, as applicable:

(1) adhere to the code of ethics prescribed by §78.72;

(2) comply with work practices and procedures of this chapter;

(3) present to the department or the department's representative upon request any identification card, credential, or certificate issued by the department or the department's representative or designee;

(4) comply with the requirements of §1958.155 of the Act (relating to Conflict of Interest; Disclosure Required);

(5) maintain insurance coverage required under §78.40 while engaging in mold-related activities regulated under this chapter;

(6) comply with the recordkeeping responsibilities under §78.74 at both the Texas office and work site locations as applicable;

(7) cooperate with department personnel and representatives or designees of the department in the discharge of their official duties, as described in §78.85; and

(8) notify the department of the following changes no later than the indicated time period after such changes occur, on a department-approved form in a manner specified by the department:

(A) withdrawal of licensed mold remediation contractor or licensed mold remediation company from association with a mold remediation project- five calendar days.

(B) addition of licensed mold remediation company to association with a mold remediation project- one calendar day.

(C) change in mailing address or telephone number- 30 calendar days.

(D) change of persons who have an ownership interest of 10% or more in a person licensed or accredited under this chapter, including additions to or deletions from any list of such persons previously supplied to the department and any changes in the names, addresses, or occupations of any persons on such a list- 30 calendar days.

(E) addition or deletion of a responsible person- 30 calendar days.

(b) All individuals who are required to be licensed or registered under this chapter must have a valid department-issued identification card, credential, or certificate, as applicable, present at the work-site when engaged in mold-related activities.

(c) The licensee overseeing mold-related activities, with the exception of activities performed by a mold analysis laboratory, must ensure that a client and the property owner (or the property owner's designee), if not the same, are provided a copy of the department Consumer Mold Information Sheet (CMIS).

(1) The licensee shall provide the CMIS on the earlier of:

(A) the first contact with the client, potential client, or property owner or designee of the property owner, or

(B) at least one calendar day before the initiation of any mold-related activity.

(2) In an emergency as described in §78.110(e), the licensee shall ensure that the Consumer Mold Information Sheet is provided to the client and the property owner (or the property owner's designee), if not the same, as soon as practicable but not later than the following calendar day after the licensee identifies the emergency.

(d) Credentialed persons are responsible for determining whether the mold-related activities in which they will engage require additional credentials beyond those required under this chapter.

(e) No person shall sell, assign, or transfer a credential, identification card, certificate, or approval issued under this chapter. A person shall obtain a new credential or approval after the transfer of a person that is not an individual before activities requiring a credential or approval under this chapter may be conducted.

(f) The individual that is designated by a licensed mold assessment company or mold remediation company as its responsible person shall not be the responsible person for another licensee with the same category of license.

(g) Consumer complaint information.

(1) A licensed or accredited person shall notify each client of the department's name, web address, mailing address, and telephone number for the purpose of directing complaints to the department.

(2) The information shall be displayed on written documents provided by the credentialed person to a client, property owner, or third party, including mold assessment reports and protocols, mold remediation work plans, bids, estimates, contracts, bills for service, and information brochures.

(h) Office requirement. A person licensed under this chapter must maintain an office in Texas. An individual employed by a person licensed under this chapter is considered to maintain an office in Texas through that employer.

*§78.74. Records.*

(a) Record retention. Records and documents required by this section shall be retained for the time specified in subsection (b)(2) for mold remediation companies and contractors, subsection (c)(2) for mold assessment companies and consultants, subsection (d) for mold analysis laboratories, and subsection (e)(1) for training providers.

(1) Records and documents shall be made available for inspection by the department or the department's representative or designee or any law enforcement agency immediately upon request.

(2) Licensees and accredited training providers who cease to do business shall notify the department in a manner specified by the department at least 30 calendar days before such event to advise how they will maintain all records during the minimum three- or five-year retention period. The department, upon receipt of such notification and at its option, may provide instructions for how the records shall be maintained during the required retention period. A licensee or accredited person shall notify the department that it has complied with the department's instructions within 30 calendar days after their receipt or make other arrangements approved by the department. Failure to comply may result in disciplinary action.

(b) Mold remediation companies and contractors. A licensed mold remediation company shall maintain the records listed in paragraphs (1) and (2) for each mold remediation project performed by the company and the records listed in paragraph (4) for each remediation

worker training session provided by the company. A licensed mold remediation contractor not employed by a company shall personally maintain the records listed in paragraphs (1) and (2) for each mold remediation project performed by the contractor and the records listed in paragraph (4) for each remediation worker training session provided by the mold remediation contractor.

(1) A licensed mold remediation contractor shall maintain the following records and documents on-site at the location of the mold-related activities at a project for its duration:

(A) a current copy of the mold remediation work plan and all mold remediation protocols used in the preparation of the work plan; and

(B) a listing of the names and license or registration numbers of all individuals working on the remediation project.

(2) A licensed mold remediation company shall maintain the following records and documents at a central location at its Texas office for three years following the stop date of each project that the company performs. A licensed mold remediation contractor not employed by a company shall maintain the following records and documents at a central location at his or her Texas office for three years following the stop date of each project that the contractor performs:

(A) a copy of the mold remediation work plan specified under paragraph (1)(A);

(B) photographs of the scene of the mold remediation taken before and after the remediation;

(C) the written contract between the mold remediation company or remediation contractor and the client, and any written contracts related to the mold remediation project between the company or contractor and any other party;

(D) all invoices issued regarding the mold remediation; and

(E) copies of all certificates of mold remediation issued by the company or contractor.

(3) A remediation contractor or company may maintain the records required under paragraphs (1) and (2) in an electronic format. A remediation contractor or company who maintains the required records in an electronic format must provide paper copies of records to a department inspector during an inspection if requested to do so by the inspector.

(4) A licensed mold remediation contractor or licensed mold remediation company that provides mold remediation worker training to meet the requirements under §78.68(d) shall maintain copies of the required training documents at a central location at its Texas office.

(c) Mold assessment companies and consultants.

(1) A licensed mold assessment company shall maintain the following records and documents at a central location at its Texas office for the time period required under paragraph (2) for each project that the company performs. A licensed mold assessment consultant not employed by a company shall maintain the following records and documents at a central location at his or her Texas office for the time period required under paragraph (2) for each project that the contractor performs:

(A) the name and mold credential number of each of its employees who worked on the project and a description of each employee's involvement with the project;

(B) the written contract between the mold assessment company or consultant and the client;

(C) all invoices issued regarding the mold assessment;

(D) copies of all laboratory reports and sample analyses;

(E) copies of all photographs required under §78.140;

(F) copies of all mold remediation protocols and changes prepared as a result of mold assessment activities; and

(G) copies of all passed clearance reports issued by the company or consultant.

(2) For each project, a licensed mold assessment company or consultant shall maintain all the records listed in paragraph (1) until:

(A) the company or consultant issues a mold assessment report, management plan, or remediation protocol to a client, if the company or consultant performs only the initial assessment for the project; or

(B) the company or consultant issues the final status report to the client, if a final status report is issued; or

(C) the company or consultant provides the signed Certificate of Mold Damage Remediation to a mold remediation contractor or company, if a Certificate of Mold Damage Remediation is provided.

(d) Mold analysis laboratories. A licensed mold analysis laboratory shall maintain copies of the results, including the sample identification number, of all analyses performed as part of a mold assessment or mold remediation for three years from the date of the sample analysis.

(e) Training providers. Accredited training providers shall comply with the following record-keeping requirements. The training provider shall maintain the records in a manner that allows verification of the required information by the department or the department's representative or designee.

(1) The training provider shall maintain records for at least five years from the date of each training course.

(2) A training provider may maintain the records required under paragraph (1) in an electronic format. A training provider who maintains the required records in an electronic format must provide paper copies of records to a department inspector during an inspection if requested to do so by the inspector.

#### §78.80. Fees.

(a) Unless otherwise specified, the fees established in this section must be paid to the department before a license, registration, or accreditation will be issued or renewed.

(b) Schedule of Fees.

(1) Fees for Notifications:

(A) Notification of mold remediation, initial: owner-occupied residential dwelling unit--\$25

(B) Notification of mold remediation, initial: other than owner-occupied residential dwelling unit--\$25

(2) Fees for Credentials:

(A) Mold assessment technician license or renewal--\$150

(B) Mold assessment consultant license or renewal--\$500

(C) Mold assessment company license or renewal--\$850

(D) Mold remediation worker registration or renewal--\$50

(E) Mold remediation contractor license or renewal--\$450

(F) Mold remediation company license or renewal--\$850

(G) Mold analysis laboratory license or renewal--\$750

(H) Mold training provider accreditation or renewal--\$750

(3) Fees for Approval of Training Courses:

(A) Application for approval of initial mold training course--\$100

(B) Application for approval of initial mold training course when submitted concurrent with application for mold training provider initial accreditation--\$0

(C) Application for approval of continuing education mold training course--\$100

(D) Application for approval of continuing education mold training course when submitted concurrent with application for mold training provider initial accreditation--\$0

(4) Fee for a replacement or duplicate credential, certificate, or identification card --\$25

(c) Late renewal fees for licenses, registrations, and accreditations issued under this chapter are prescribed under §60.83 of this title (relating to Late Renewal Fees).

(d) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).

(e) The fee for a dishonored/returned check or payment is the fee prescribed under §60.82 of this title (relating to Dishonored Payment Device).

(f) All fees paid to the department are nonrefundable.

§78.85. *Inspections and Investigations.*

(a) The department or the department's representative or designee may inspect or investigate the business practices of any persons involved with mold-related activity for compliance with this chapter.

(b) The department or the department's representative or designee, upon presenting identification, shall have the right to enter any area or environment, including but not limited to any containment area, building, construction site, storage or office area, or vehicle to review records, to question any person, or to locate, identify, or assess areas of mold growth for the purpose of inspection and investigation for compliance with this chapter.

(c) The department or its representative or designee conducting official duties is not required to notify in advance or seek permission to conduct inspections or investigations.

(1) It is a violation for any person to interfere with, deny, or delay an inspection or investigation conducted by the department or its representative or designee.

(2) The department or its representative or designee shall not be impeded or refused entry in the course of official duties by reason of any regulatory or contractual specification.

§78.110. *Notification of Mold Remediation Activities.*

(a) General provision. A mold remediation contractor or company shall notify the department or the department's representative or designee of a mold remediation, as defined in §78.10(29), when mold contamination affects a total surface area of 25 contiguous square feet or more. The notification shall be:

(1) submitted to the department or its representative or designee no less than five calendar days before the anticipated start date of the mold remediation. The mold remediation contractor or company shall retain a confirmation that the department received the notification;

(2) submitted on a department-approved form in a manner specified by the department. The form must be filled out completely and properly. Blanks that do not apply shall be marked "N/A." The "N/A" designation will not be accepted for identification of the work site, building description, building owner, individuals required to be identified on the notification form, start- and stop-dates, or scheduled hours of mold remediation;

(3) completed to identify the responsible person; and

(4) accompanied by the fee required under §78.80.

(b) Start-date change to later date. When mold remediation activity is rescheduled to start later than the date or hours contained in the most recent notice, the mold remediation contractor or company shall submit a notification to the department in the manner specified by the department as soon as possible but before the start-date on the most recent notice. A written amended notification is required and shall be submitted in the manner specified by the department.

(c) Start-date change to earlier date. When mold remediation activities begin on a date earlier than the date contained in the notice, the mold remediation contractor or company shall submit a notification to the department of the new start-date in the manner specified by the department at least five calendar days before the start-date unless the provisions of subsection (e) apply.

(d) Start-date/stop-date requirement.

(1) In no event shall mold remediation begin or be completed on a date other than the date contained in the written notice except for operations covered under subsection (e).

(2) Amendments to start-dates must be submitted as required in subsections (b) and (c). The cancellation of a mold remediation project shall follow the requirements applicable to a start-date change to a later date.

(3) The mold remediation contractor or company shall submit a notification with schedule changes including work-hour changes to the department no less than one calendar day before the most recent stop-date or the new stop-date, whichever comes first.

(4) An amendment is required for any stop-dates that change by more than one workday.

(e) Provision for emergency. An emergency exists if a delay in mold remediation services in response to a water damage occurrence would increase mold contamination.

(1) In an emergency, the mold remediation contractor or company shall submit a notification to the department as soon as practicable but not later than the following working day after the licensee identifies the emergency.

(2) The requirements of this section are applicable to an emergency with the exception of paragraph (a)(1). The contractor or company shall retain a confirmation that the notification was received by the department.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-8179



## CHAPTER 90. OFFENDER EDUCATION PROGRAMS FOR ALCOHOL AND DRUG-RELATED OFFENSES

The Texas Commission of Licensing and Regulation (Commission) adopts new rules at 16 Texas Administrative Code (TAC), Chapter 90, Subchapter A, §90.1; Subchapter B, §§90.20 - 90.24, §90.26, and §90.27; Subchapter C, §§90.30 - 90.34; Subchapter D, §§90.40 - 90.49; Subchapter E, §§90.51 - 90.54; and Subchapter G, §§90.92 - 90.94, regarding the Offender Education Programs for Alcohol and Drug-Related Offenses, without changes to the proposed text as published in the April 21, 2017, issue of the *Texas Register* (42 TexReg 2080). The rules will not be republished.

The Commission also adopts new rules at 16 TAC, Chapter 90, Subchapter A, §90.10; Subchapter B, §90.25; Subchapter E, §90.50; Subchapter F, §90.80; and Subchapter G, §90.91, regarding the Offender Education Programs for Alcohol and Drug-Related Offenses, with changes to the proposed text as published in the April 21, 2017, issue of the *Texas Register* (42 TexReg 2080). The rules will be republished.

The Commission also withdrew proposed new rule at 16 TAC, Chapter 90, Subchapter G, §90.90 as published in the April 21, 2017, issue of the *Texas Register* (42 TexReg 2080).

The Texas Legislature enacted Senate Bill 202 (S.B. 202), 84th Legislature, Regular Session (2015), which, in part, transferred 13 occupational licensing programs in two phases from the Department of State Health Services (DSHS) to the Commission and the Texas Department of Licensing and Regulation (Department). The Commission and Department completed the Phase 1 transition of seven programs on October 3, 2016.

Under Phase 2, the following six programs are being transferred from DSHS to the Commission and the Department: (1) Laser Hair Removal, Texas Health and Safety Code, Chapter 401, §§401.501 - 401.522; (2) Massage Therapy, Texas Occupations Code, Chapter 455; (3) Code Enforcement Officers, Texas Occupations Code, Chapter 1952; (4) Sanitarians, Texas Occupations Code, Chapter 1953; (5) Mold Assessors and Remediators, Texas Occupations Code, Chapter 1958; and (6) Offender Education Programs, Alcoholic Beverage Code, Chapter 106, §106.115 (Alcohol Education Program for Minors); Transportation Code, Chapter 521, §§521.374 - 521.376 (Drug Offender Education Program); Code of Criminal Procedure, Chapter 42A, Articles 42A.403, 42A.405 and 42A.406 (formerly Chapter 42, Article 42.12, §13(h)) (DWI Education Program); and Code of

Criminal Procedure, Chapter 42A, Articles 42A.404, 42A.405, and 42A.406 (formerly Chapter 42, Article 42.12, §13(j)) (DWI Intervention Program). The statutory amendments transferring regulation of these six Phase 2 programs from DSHS to the Commission and the Department will take effect on September 1, 2017.

The new rules were adopted to enable the Commission and the Department to regulate the six Phase 2 programs listed above. The adopted new rules provide for the Department to perform the various functions, including licensing, compliance, and enforcement, necessary to regulate these transferred programs. The effective date of the adopted rules is November 1, 2017. The effective date will coincide with the completion of the transfer of the programs to the Commission and the Department.

The adopted new Subchapter A provides the General Provisions for the proposed new rules. The adopted new §90.1 provides the statutory authority for the Commission and the Department to regulate the Offender Education Programs, which include the Alcohol Education Program for Minors, the Drug Offender Education Program, the DWI Education Program, and the DWI Intervention Program.

The adopted new §90.10 defines the terms used in the Offender Education Programs under this chapter. The Department has made a technical correction to §90.10(16) from the proposed rules.

The adopted new Subchapter B provides the instructor requirements.

The adopted new §90.20 creates the instructor certification requirement.

The adopted new §90.21 details the instructor certification eligibility requirements.

The adopted new §90.22 explains the instructor training course and examination required for the instructor certification.

The adopted new §90.23 details the application process for obtaining an instructor certification.

The adopted new §90.24 establishes the instructor certification term and renewal requirements.

The adopted new §90.25 explains the instructor teaching and continuing education requirements. Based on the public comments and information from DSHS staff, the Department has made changes to this section from the proposed rules.

The adopted new §90.26 details the audit process for instructor continuing education.

The adopted new §90.27 establishes instructor responsibilities.

The adopted new Subchapter C provides the program/provider certification requirements.

The adopted new §90.30 establishes the program/provider certification requirements.

The adopted new §90.31 details the program/provider certification application for headquarter locations.

The adopted new §90.32 details the program/provider certification requirements for branch sites and other locations.

The adopted new §90.33 establishes the program/provider certification term and renewal requirements.

The adopted new §90.34 explains the change of address requirement and the requirement to provide certain information for program/provider certifications.

The adopted new Subchapter D provides the program requirements for curriculum, courses, classrooms, and certificates.

The adopted new §90.40 details the program curriculum and materials for all Offender Education Programs under this chapter.

The adopted new §90.41 addresses the process for the approval of the program curriculum and rules for the DWI Education Program with three other state agencies.

The adopted new §90.42 addresses the process for the adoption of the program rules for the Drug Offender Education Program with another state agency.

The adopted new §90.43 details the general program and course requirements for all Offender Education Programs under this chapter.

The adopted new §90.44 provides additional course requirements for the Drug Offender Education Program.

The adopted new §90.45 provides additional course requirements for the Alcohol Education Program for Minors.

The adopted new §90.46 provides additional course requirements for the DWI Education Program.

The adopted new §90.47 provides additional course requirements for the DWI Intervention Program.

The adopted new §90.48 establishes classroom facilities and equipment requirements.

The adopted new §90.49 creates course completion certificates for participants in Offender Education Programs.

The adopted new Subchapter E provides the program requirements for administration and other responsibilities.

The adopted new §90.50 details the program administration requirements. Based on additional Department research and information from DSHS staff, the Department has made changes to this section from the proposed rules.

The adopted new §90.51 explains the recordkeeping requirements regarding course participants.

The adopted new §90.52 provides for annual reports.

The adopted new §90.53 establishes the confidentiality requirements for the Offender Education Programs.

The adopted new §90.54 prohibits discrimination in the Offender Education Programs.

The adopted new Subchapter F establishes fees for the Offender Education Programs under this chapter.

The adopted new §90.80 details the applicable fees in the Offender Education Programs. Based on the public comments and information from DSHS staff, the Department has made changes to this section from the proposed rules related to the instructor continuing education seminar fee. In addition, based on a Department fee analysis, the Department has made changes to this section to lower two fees.

The adopted new Subchapter G provides enforcement provisions. Based on additional Department research, information from DSHS staff, and changes made to other rule sections, the Department has made changes to the title of Subchapter G.

The adopted new §90.91 requires cooperation with the Department regarding investigation of complaints. Based on additional Department research and information from DSHS staff, the Department has made changes to this section from the proposed rule.

The adopted new §90.92 allows for administrative penalties and sanctions to be imposed.

The adopted new §90.93 specifies the authority to enforce the statutes and this chapter.

The adopted new §90.94 details additional conduct subject to disciplinary action for Offender Education Programs and specified individuals.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the April 21, 2017, issue of the *Texas Register* (42 TexReg 2080). The deadline for public comments was May 22, 2017. The Department held a public hearing during the public comment period on May 12, 2017. During the 30-day public comment period the Department received written comments from ten interested parties. Two of these interested parties also made oral comments at the public hearing. The public comments received are summarized below.

Rule 90.10(13), Definition of Drug Offender.

*Public Comment*--One commenter suggested at the public hearing and in written comments changing the definition of "Drug Offender" under §90.10(13). According to the commenter, at least in Travis County, the majority of the people taking the DWI and the Drug Offender classes are not convicted and may not be convicted. The commenter thought that for the DWI class, the people generally become convicted, but they take the class ahead of the conviction date, and in the drug offender cases, many of these people may get a deferred disposition, or take the class as a condition of disposing of their case. The commenter suggested amending the definition to indicate that a drug offender is a person "who has been charged with a non-alcohol related drug offense class and may be required to take the drug offender education program as a condition for the final disposition of his/her case regardless if they have been convicted or not."

*Department Response*--The Department's proposed definition is the same as the current DSHS definition of "Drug Offender." The Department's proposed definition also reflects the applicable program statute. Transportation Code §521.372, Automatic Suspension; License Denial, states: "(a) A person's driver's license is automatically suspended on final conviction of: (1) an offense under the Controlled Substances Act; (2) a drug offense; or (3) a felony under Chapter 481, Health and Safety Code, that is not a drug offense." Transportation Code §521.374, Educational Program or Equivalent Education, states: "(a) A person whose license is suspended under Section 521.372 may attend an educational program, approved by the Texas Department of Licensing and Regulation under rules adopted by the Texas Commission of Licensing and Regulation and the Texas Department of Public Safety, that is designed to educate persons on the dangers of drug abuse." While judges may order other defendants to attend a Drug Offender Education Program approved by the Department (currently approved by DSHS), the Department's proposed rules conform to the current statute. The Department did not make any changes to the proposed rules based on this public comment.

Rule 90.10(16), Definition of DWI Education Program.



Public Comment--One commenter suggested changing the definition of "DWI Education Program" under §90.10(16). The commenter suggested changing the language from "provided for persons convicted of a DWI offense and placed on community supervision" to "provided for persons convicted or arrested of a DWI offense" and deleting "and placed on community supervision."

*Department Response*--The current DSHS rules use the terminology "convicted" and "placed on community supervision", and the Department continued that terminology in its proposed rules. The Department's proposed definition also reflects the applicable program statute. Code of Criminal Procedure, Chapter 42A, Article 42A.403, Educational Program for Certain Intoxication Offenders; Waiver or Extension of Time, states: "(a) A judge who places on community supervision a defendant convicted of an offense under Sections 49.04-49.08, Penal Code, shall require as a condition of community supervision that the defendant attend and successfully complete, before the 181st day after the date community supervision is granted, an educational program designed to rehabilitate persons who have driven while intoxicated ..." While judges may order other defendants to attend a DWI Education Program approved by the Department (currently approved by DSHS), the Department's proposed rules conform to the current statute. The Department did not make any changes to the proposed rules based on this public comment.

The Department did make a technical correction to this definition to add the words "Code of" before "Criminal Procedure, Chapter 42A ...."

Rule 90.10(17), Definition of DWI Intervention Program.

Public Comment--One commenter suggested at the public hearing and in written comments changing the definition of "DWI Intervention Program" under §90.10(17). The definition states that the intervention program is an educational program, but the commenter stated that it is a counseling and educational program. The commenter stated that the intervention program is not therapy or treatment, but suggested defining the program as an educational and counseling program to differentiate it from the DWI Education Program.

*Department Response*--The current DSHS rules do not include the word "counseling" in the definition, and the Department did not include "counseling" in its proposed rules. The Department's proposed definition also reflects the applicable program statute. Code of Criminal Procedure, Chapter 42A, Article 42A.404, Educational Program for Certain Repeat Intoxication Offenders; Waiver, states: "(a) The judge shall require a defendant who is punished under §49.09, Penal Code, to attend and successfully complete as a condition of community supervision an educational program for repeat offenders that is approved by the Department." According to the statute, the DWI Intervention Program is an education program, not an education and counseling program. The proposed definition of "DWI Intervention Program" is sufficient to distinguish between that program and the DWI Education Program. In addition, to insert the word "counseling" may cause confusion with other licensed professions that do provide counseling services and may cause confusion regarding the scope of practice of offender education program instructors. The Department did not make any changes to the proposed rules based on this public comment.

Rule 90.25, Instructor Teaching and Continuing Education Requirements.

Public Comment--One commenter offered comments at the public hearing and in written comments regarding the instructor continuing education seminar requirements (known as "in-service" under the current DSHS rules). The commenter stated that under the Department proposed rules it appears that an instructor must take a different continuing education seminar (in-service) for each instructor certification (if the instructor is teaching courses for different offender education programs) and that each offender education program has a different continuing education seminar (in-service). The commenter stated that the DSHS in-service is the same for all instructors and all instructors take the same DSHS in-service regardless of which offender education program certification(s) the instructor holds. The commenter stated that an instructor takes one DSHS in-service but it is counted for all offender education program certification(s) the instructor holds.

*Department Response*--The Department proposed rules reflect the current DSHS rules, which state that each offender education program requires a different instructor in-service seminar and that the in-service seminar for one offender education program certification cannot be counted toward a different offender education program certification. Based on information provided by DSHS staff, the current DSHS practice is that one in-service seminar serves as the in-service seminar for each program. The instructor just pays a separate fee for each offender education program that he/she is certified in as an instructor. The same course counts towards multiple certificates as long as the seminar occurs during the current certification period for each certificate and as long as the instructor pays for each certificate. Based on the public comments and the information from DSHS staff, the Department has amended proposed §90.25(a)(4), (b)(4), (c)(4), and (d)(5) to reflect the current DSHS practice. The Department also has amended §90.80, Fees, to reflect the current DSHS practice of charging instructor continuing education seminar fees per certificate per seminar.

Public Comment--One commenter suggested amending §90.25(c) to change the word "teach" to "administer" as it relates to DWI Education Instructors teaching a minimum of four complete DWI Education courses during the instructor certification period.

*Department Response*--Instructors "teach" the courses; they do not "administer" them. Changing the terminology would change the scope of the instructors' duties. It would also create confusion with the role of the "Administrator", who is a certified instructor in good standing and is authorized by the provider to ensure compliance with all aspects of the program. Not all instructors are administrators. This comment is a substantive change to the proposed rules and such a change cannot be made at this point in the rulemaking process, without starting over and republishing the proposed rules. The goal of these proposed rules is to transfer the Offender Education Programs from DSHS to the Department with as little disruption and change as possible.

The comment also would presumably allow for online courses. Historically, the DWI Education Program statute has not been interpreted to allow online courses, and DSHS has not approved any online courses. Legislative efforts this year that would have allowed online courses did not pass. (Senate Bill 333 and House Bill 833, 85th Legislature, Regular Session (2017)). The use of online courses is an issue that the Department can review during the strategic planning process. The Department did not make any changes to the proposed rules based on this public comment.

Rule 90.30, Program/Provider Certification Requirement.

Public Comment--One commenter, during the public hearing and in written comments, suggested adding a provision to §90.30 to require that the certificates of completion that are created for defendants or students be printed and dispatched in the state of Texas, as opposed to companies from out of state coming in, teaching, and mailing the certificates from another state.

*Department Response*--Adding a requirement that the certificates of completion must be printed in and distributed from Texas is a substantive change to the proposed rules and such a change cannot be made at this point in the rulemaking process, without starting over and republishing the proposed rules. The goal of these proposed rules is to transfer the Offender Education Programs from DSHS to the Department with as little disruption and change as possible. In addition, the Department is not aware of any problems with the current system that would require this type of restriction. The Department will comply with state requirements regarding the procurement of services and goods. The Department did not make any changes to the proposed rules based on this public comment.

Public Comment--One commenter during the public hearing suggested adding a new requirement under §90.30 that if an individual or entity is seeking to offer an offender education program, it must be located in Texas and have a physical location in Texas.

*Department Response*--Adding a requirement that an individual or entity offering an education program must be located in Texas and have a physical location in Texas is a substantive change to the proposed rules and such a change cannot be made at this point in the rulemaking process, without starting over and republishing the proposed rules. The goal of these proposed rules is to transfer the Offender Education Programs from DSHS to the Department with as little disruption and change as possible. In addition, this suggestion appears to limit competition from potential out-of-state providers that may offer courses in Texas. There are no restrictions in the current DSHS rules that the individual or entity must be located in Texas. The Department did not make any changes to the proposed rules based on this public comment.

Public Comment--One commenter suggested amending §90.30(c) to change the word "taught" to "administered" as it relates to offender education programs being taught exclusively by instructors certified to instruct the particular type of Offender Education Program.

*Department Response*--Instructors "teach" the classes; they do not "administer" them. Changing the terminology would change the scope of the instructors' duties. It would also create confusion with the role of the "Administrator", who is a certified instructor in good standing and is authorized by the provider to ensure compliance with all aspects of the program. Not all instructors are administrators. This comment is a substantive change to the proposed rules and such a change cannot be made at this point in the rulemaking process, without starting over and republishing the proposed rules. The goal of these proposed rules is to transfer the Offender Education Programs from DSHS to the Department with as little disruption and change as possible.

The comment also would presumably allow for online courses. Historically, the Offender Education Program statutes (with the exception of the Alcoholic Beverage Code) have not been interpreted to allow online courses, and DSHS has not approved any online courses. Legislative efforts this year that would have allowed online courses for two of the Offender Education Pro-

grams did not pass. (Senate Bill 333 and House Bill 833, 85th Legislature, Regular Session (2017)). The use of online courses is an issue that the Department can review during the strategic planning process. The Department did not make any changes to the proposed rules based on this public comment.

Public Comment--One commenter during the public hearing suggested that the Department add a new rule requiring programs/providers to submit a surety bond. The same commenter in written comments suggested that this surety bond requirement be added as a new subsection to §90.30. The commenter stated that the driver education program at the Department requires a bond of \$25,000 for each provider. The commenter stated that each provider that is going to offer offender education should have a minimum bond. The requirement would be on the program provider, not the individual instructors. The commenter suggested that for an initial application, an original bond in the amount of \$25,000 shall be submitted, and for renewals, an original bond or a continuation agreement for the approved bond currently on file shall be submitted.

Seven commenters submitted written public comments opposing the suggestion to require programs/providers to submit surety bonds. Four of these seven commenters stated the bonds are not necessary as Offender Education Program providers have not been determined to have violated Texas law. They stated that requiring surety bonds will increase costs to conduct programs forcing programs to raise tuition. It would present a hardship to the clients and an impediment to providers. The fifth commenter opposed surety bonds for the DWI Education Program and the Drug Offender Education Program, because it would push local vendors out of business, help drive the online programs to meet demands, and would have a tremendous impact on the ability to operate. The sixth commenter opposed surety bonds and stated that if they had to provide surety bonds for each of their programs, they would be forced to shut down their business. The commenter further stated that most providers use pay systems that hold the provider responsible when clients are not happy with the results. The seventh commenter opposed surety bonds and stated that the proposal to require surety bonds is an effort to reduce competition and online opposition.

*Department Response*--Adding a requirement to submit a surety bond is a substantive change to the proposed rules and such a change cannot be made at this point in the rulemaking process, without starting over and republishing the proposed rules. The goal of these proposed rules is to transfer the Offender Education Programs from DSHS to the Department with as little disruption and change as possible.

In addition, this proposed surety bond requirement is not supported by the four Offender Education Program statutes. The Driver Education Safety Program referred to in the public comment is a separate Department program, which has statutory requirements under Education Code Chapter 1001 to require surety bonds from certain individuals and entities. There are no statutory requirements for surety bonds for the four Offender Education Programs transferring from DSHS. The Department did not make any changes to the proposed rules based on this public comment.

Rule 90.31, Program/Provider Certification Application-Headquarters.

Public Comment--One commenter suggested adding a new subsection under §90.31 stating that all certified program/provider headquarters must have a physical location in the state of Texas

where all Offender Education documents and rosters will be kept for audit purposes.

*Department Response*--Adding the suggested requirement that all certified program/provider headquarters have a physical location in Texas is a substantive change to the proposed rules and such a change cannot be made at this point in the rulemaking process, without starting over and republishing the proposed rules. The goal of these proposed rules is to transfer the Offender Education Programs from DSHS to the Department with as little disruption and change as possible. In addition, this suggestion appears to limit competition from potential out-of-state providers that may offer courses in Texas. The Department did not make any changes to the proposed rules based on this public comment.

Rule 90.40, Program Curriculum and Materials--All Programs.

Public Comment--A commenter, during the public hearing and in written comments, offered comments on the use of supplemental media as part of the Offender Education Program curriculum as provided for under §90.40(c). The proposed rule requires that any supplemental media used in an Offender Education Program must have prior written approval from the department and that the class time must be extended by the same amount of time used for the supplemental material. The commenter inquired whether supplementing the curriculum is acceptable as long as all of the existing mandated curriculum is covered in its entirety. The commenter also wanted to know if there could be a qualification that if the supplemental material would exceed more than a certain number of minutes, then additional time would have to be added to the course. The commenter suggested allowing up to 5-15 minutes per 3-4 hour class session without requiring the class time extension. According to the commenter, some classes may not use the full time so there may be time to add supplemental information.

*Department Response*--The Department is committed to updating the curriculum including supporting materials and videos for the Offender Education Programs. The Department will research the appropriate methods for accomplishing this goal. The DWI Education Program and the Drug Offender Education Program also involve other state agencies. As part of the effort to update the curriculum, the Department will consider the issues raised in the public comment regarding the use of supplemental media. The Department did not make any changes to the proposed rules based on this public comment.

Public Comment--One commenter, during the public hearing and in written comments, suggested adding a new rule that requires the state agency to update the course curriculum more often. The commenter stated that the offender education program curriculum and statistics are out of date. Some arrest data statistics are from 2011, and some of the information in the support manual is from 2009. The commenter suggested more regular updating of the curriculum every year or two (written comments) or every 2 or 3 years (public hearing comments) and suggested including a requirement on the State to update the curriculum. The commenter also stated that the videos used as part of the curriculum need to be updated. Some of them are from 1991. The commenter has received comments from people that are attending the classes that the curriculum should be updated.

*Department Response*--The Department is committed to updating the curriculum including supporting materials and videos for the Offender Education Programs. The Department will research the appropriate methods for accomplishing this goal. The DWI

Education Program and the Drug Offender Education Program also involve other state agencies. The Department did not make any changes to the proposed rules based on this public comment.

Public Comment--Another commenter offered comments about the program curriculum being outdated. According to the commenter, in some cases, updates have not been made in 10 years. The commenter recommended that the three state agencies involved convene a task force every two years to review and update the curriculum. The commenter suggested designating a non-profit organization to train instructors about the curriculum changes. The commenter also expressed concerns about the outdated information provided in the Drug Offender Education Program related to HIV, HCV, AIDS, and STDs. The education should include information on the effectiveness of the newest medications and preventative medications.

*Department Response*--The Department is committed to updating the curriculum for the Offender Education Programs. The Department will research the appropriate methods for accomplishing this goal. The DWI Education Program and the Drug Offender Education Program also involve other state agencies. The Department did not make any changes to the proposed rules based on this public comment.

Rule 90.43, General Program and Course Requirements--All Programs.

Public Comment--One commenter suggested an amendment to §90.43(b) to change the word "taught" to "administered" as it relates to courses being taught by instructors certified to instruct the applicable type of Offender Education Program. The commenter also suggested deleting the requirement that instructors must be physically present in the classroom with all other participants for each class and deleting the requirement that a single instructor must teach the entire course for all offender education programs with the exception of the DWI Intervention Program which may allow two certified instructors.

*Department Response*--Instructors "teach" the classes; they do not "administer" them. Changing the terminology would change the scope of the instructors' duties. It would also create confusion with the role of the "Administrator", who is a certified instructor in good standing and is authorized by the provider to ensure compliance with all aspects of the program. Not all instructors are administrators. In addition, under the current DSHS rules, instructors must be physically present in the classroom with the participants and a single instructor must teach the entire course, with the exception of the DWI Intervention Program that allows for two instructors. The comment suggests substantive changes to the proposed rules and such changes cannot be made at this point in the rulemaking process, without starting over and republishing the proposed rules. The goal of these proposed rules is to transfer the Offender Education Programs from DSHS to the Department with as little disruption and change as possible.

The comment also would presumably allow for online courses. Historically, the Offender Education Program statutes (with the exception of the Alcoholic Beverage Code) have not been interpreted to allow online courses, and DSHS has not approved any online courses. Legislative efforts this year that would have allowed online courses for two of the Offender Education Programs did not pass. (Senate Bill 333 and House Bill 833, 85th Legislature, Regular Session (2017)). The use of online courses is an issue that the Department can review during the strategic

planning process. The Department did not make any changes to the proposed rules based on this public comment.

*Public Comment*--One commenter suggested amendments to §90.43(j) to change the word "conduct" to "administer" and "exit interview" to "exit evaluation" as it relates to course instructors for all offender education program conducting exit interviews with each participant as outlined in the applicable education program manual. The commenter also suggested deleting the language that the exit interview be conducted "as outlined in the applicable education program manual."

*Department Response*--Instructors "conduct" exit interviews; they do not "administer" exit evaluations. Changing the terminology would change the scope of the instructors' duties. It would also create confusion with the role of the "Administrator", who is a certified instructor in good standing and is authorized by the provider to ensure compliance with all aspects of the program. Not all instructors are administrators. The proposed change also suggests a less formal and less uniform method of conducting the exit interviews. Under the current DSHS rules, these interviews must be conducted uniformly as prescribed in the applicable education program manual. These suggestions are substantive changes to the proposed rules and such changes cannot be made at this point in the rulemaking process, without starting over and republishing the proposed rules. The goal of these proposed rules is to transfer the Offender Education Programs from DSHS to the Department with as little disruption and change as possible. The Department did not make any changes to the proposed rules based on this public comment.

Rule 90.80, Fees.

*Public Comment*--As explained under §90.25, one commenter offered comments at the public hearing and in written comments regarding the continuing education seminar requirements (known as "in-service" under the current DSHS rules). The commenter stated that the DSHS in-service is the same for all instructors and all instructors take the same DSHS in-service regardless of which offender education program certification(s) the instructor holds. The commenter stated that an instructor takes one DSHS in-service but it is counted for all offender education programs.

*Department Response*--As explained under §90.25, the Department proposed rules reflect the current DSHS rules. Based on the public comments and the information from DSHS staff, the Department has amended §90.80, Fees, subsection (b)(6) to reflect the current DSHS practice of charging instructor continuing education seminar fees per certificate per seminar. As explained under §90.25, the Department also amended proposed rules §90.25(a)(4), (b)(4), (c)(4), and (d)(5) to reflect the current DSHS practice. The Department also made additional changes to the fees section as explained below under "Other Changes Made by the Department."

Public Comments Proposing to Add New Rules

*Public Comment*--A commenter suggested that the Department add a new "Alternative Delivery Method to the DWI Education Program." The commenter stated that the DWI Offender Education Program is mandated by statute, but it can be waived if the defendant does not have access to the course or can show cause to not attend. According to the commenter, by offering an Alternative Delivery Method to the DWI Education Program, the defendant will no longer be able to avoid this portion of the punishment. The commenter provided suggested language for

new rules to allow for an Alternative Delivery Method to the DWI Education Program.

*Department Response*--Adding a new Alternative Delivery Method to the DWI Education Program is a substantive change in the proposed rules and such a change cannot be made at this point in the rulemaking process, without starting over and republishing the proposed rules. The goal of these proposed rules is to transfer the Offender Education Programs from DSHS to the Department with as little disruption and change as possible.

The comment also would presumably allow for online courses. Historically, the DWI Education Program statute has not been interpreted to allow online courses, and DSHS has not approved any online courses. Legislative efforts this year that would have allowed online courses did not pass. (Senate Bill 333 and House Bill 833, 85th Legislature, Regular Session (2017)). The use of online courses is an issue that the Department can review during the strategic planning process. The Department did not make any changes to the proposed rules based on this public comment.

Other Changes Made by the Department

The Department also made technical and other changes to the proposed rules based on additional Department research and review, information from DSHS staff, and a Department fee analysis.

Title of the Rule Chapter.

The Department made a technical change to the title of the proposed rule chapter from "Offender Education Programs" to "Offender Education Programs Related to Alcohol and Drug-Related Offenses." This change was made to distinguish these programs from a new program that was assigned to the Department by H.B. 162, 85th Legislature, Regular Session (2017), which creates an online offender education program for animal cruelty convictions.

Rule 90.50, Program Administration.

Based on additional Department research and information from DSHS staff, the Department has changed and narrowed the scope of §90.50(d), Program Records and Audits, as proposed. The Department has removed subsection (d)(2) regarding the onsite visits for auditing and monitoring purposes. The Department has clarified subsection (d)(3), regarding submitting documents to the Department upon request, and has renumbered the subsection as new (d)(2). The Department has removed subsection (d)(4), regarding interviewing the Program/Provider, its Administrator, its personnel, its Instructors, and its participants.

The Department has changed §90.50(h), Complaints, to remove subsection (h)(3). This provision is duplicative with §90.91 as proposed (now §90.91(a) as changed). The Department also has changed the title of the subsection to clarify the scope of the subsection and to distinguish this subsection from §90.91. The new subsection title is "Complaint Procedures and Notice."

Rule 90.80, Fees.

During the rulemaking process, the Department conducted a fee analysis for the Offender Education Programs. As a result of that analysis, the Department has made additional changes to §90.80 as proposed. Section 51.202 of the Texas Occupations Code, requires the Commission to set fees in amounts reasonable and necessary to cover the costs of administering the programs under the Department's jurisdiction. Additionally, Article

VIII, Section 2 of the General Appropriations Act requires the Department's revenue cover the cost of the Department's appropriations and other direct and indirect costs. The Department found that the fees in the proposed rules are above the amounts that will be required for the Department to cover its costs. Therefore, the Department has reduced the following fees: (1) the Program/Provider certification renewal fee is reduced from \$225 per program to \$200 per program; and (2) the fee for moving headquarters to a location outside of the county is reduced from \$300 to \$25. The decrease in these two fees will not adversely affect the administration and enforcement of the program. The reduction in these two fees will result in approximately \$5,250 of lost revenue to the state each year.

#### Title of Subchapter G

Based on additional Department research, information from DSHS staff, and changes made to other rule sections, the Department has made changes to the title of Subchapter G, as proposed, to clarify the scope of the subchapter. The new subchapter title is "Enforcement."

#### Rule 90.90, Monitoring and Audits of Programs.

Based on additional Department research and information from DSHS staff, the Department has withdrawn §90.90 as proposed. Section 90.90 as proposed was similar to §90.50(d) as proposed. The Department has narrowed the scope of §90.50(d) and withdrawn §90.90.

#### Rule 90.91, Complaints.

The Department has made changes to §90.91 as proposed to add new subsection (b). This new subsection was copied from §90.50(d)(3) as proposed and narrowed in scope to apply to investigations of complaints. The Department also has changed the title of the section to clarify the scope of the section and to distinguish this section from §90.50(h). The new section title is "Complaints; Investigations."

## SUBCHAPTER A. GENERAL PROVISIONS

### 16 TAC §90.1, §90.10

The new rules are adopted under Texas Occupations Code, Chapter 51; Alcoholic Beverage Code, Chapter 106, §106.115 (Alcohol Education Program for Minors); Transportation Code, Chapter 521, §§521.374 - 521.376 (Drug Offender Education Program); Code of Criminal Procedure, Chapter 42A, Articles 42A.403, 42A.405 and 42A.406 (formerly Chapter 42, Article 42.12, §13(h)) (DWI Education Program); and Code of Criminal Procedure, Chapter 42A, Articles 42A.404, 42A.405, and 42A.406 (formerly Chapter 42, Article 42.12, §13(j)) (DWI Intervention Program), which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51; Alcoholic Beverage Code, Chapter 106; Transportation Code, Chapter 521; Code of Criminal Procedure, Chapter 42A; and Penal Code, Chapter 49. No other statutes, articles, or codes are affected by the adoption.

#### §90.10. Definitions.

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

(1) Administrator--An individual who is a certified Instructor in good standing and who is authorized to act on behalf of the certified Provider in all respects relating to compliance with this chapter.

(2) Alcohol Education Program for Minors--An educational program provided to minors pursuant to Alcoholic Beverage Code §106.115 that is designed to:

(A) present information to participants on the effects of alcohol upon behavior and upon the lives of persons who use alcohol;

(B) help participants identify their own drinking patterns or problems;

(C) educate participants about the laws relating to possession, consumption, and purchase of alcoholic beverages and laws relating to minors under the influence of alcohol; and

(D) assist participants in developing a plan to reduce the probability of involvement in future alcohol-related illegal behavior or detrimental activity.

(3) Annual Reporting Period--The period of time beginning September 1 of each year and ending August 31 of the following year.

(4) Branch Office/Site--An additional Offender Education Program/Provider site that is located in the same or adjacent county as the headquarters of a certified Offender Education Provider.

(5) Certificates of Course Completion--Uniform, serially numbered certificates of completion required and designated by the department to be used by certified Providers for dissemination to Participants upon successful completion of an Offender Education Program.

(6) Commission--The Texas Commission of Licensing and Regulation.

(7) Continuing Education Hour--At least 50 minutes of participation in an organized, systematic learning experience which deals with and is designed for the acquisition of knowledge, skills, and information on drug or alcohol-related topics, as applicable to the particular Instructor certification.

(8) Continuing Education Seminar--A department-sponsored continuing education seminar, class or course for an applicable Offender Education Instructor certification.

(9) Course Records--Offender Education participants' personal data forms, pre- and post-tests, self-assessments, screening instrument(s), homework assignments, action plans, and any other written material required or used in the offender education class instruction.

(10) Course Roster--A form used to record data on all offender education participants enrolled in the course and to record attendance data on those participants at each class throughout the course.

(11) Course Size--The number of Offender Education participants in a course, to be calculated according to the number of participants officially enrolled in the course or the greatest number of participants in attendance in any class within a course, whichever is greater.

(12) Department--The Texas Department of Licensing and Regulation.

(13) Drug Offender--A person whose license is suspended under Transportation Code §521.372 (relating to Automatic Suspension; License Denial) and any amendments thereto, for final conviction of an offense described in that section.

(14) Drug Offender Education Program--An educational program provided to Drug Offenders pursuant to Transportation Code §521.374 that is designed to:

(A) educate participants on the dangers of drug use/abuse and associated illegal activities;

(B) provide information on the effects of drug use/abuse and related illegal activities on personal, family, social, economic and community life;

(C) assist participants in evaluating their own abusive patterns connected with their use of drugs or associated illegal activities; and

(D) assist participants in developing a plan for positive lifestyle changes to reduce chances of being involved in future drug use/abuse and related illegal behaviors.

(15) DWI--An offense relating to driving or operating a motorized vehicle while intoxicated, as described in Penal Code §§49.04 - 49.08, relating to Intoxication Offenses.

(16) DWI Education Program--An educational program provided to persons convicted of a DWI offense and placed on community supervision pursuant to Code of Criminal Procedure, Chapter 42A, Articles 42A.403, 42A.405, and 42A.406 (formerly Chapter 42, Article 42.12, §13(h)) that is designed to:

(A) present information on the effects of alcohol and other drugs on driving skills;

(B) help participants identify their own individual drinking or drugged driving patterns; and

(C) assist participants in developing a plan to reduce the probability that they will be involved in future DWI behavior.

(17) DWI Intervention Program--An educational program provided to persons punished under Penal Code §49.09, relating to Enhanced Offenses and Penalties, pursuant to Code of Criminal Procedure, Chapter 42A, Articles 42A.404, 42A.405, and 42A.406 (formerly Chapter 42, Article 42.12, §13(j)) that is designed to:

(A) educate participants about chemical dependency and the problems associated with chemical dependency;

(B) provide intensive instruction about specific actions participants can take to prevent future DWI offenses; and

(C) instruct participants about methods and ways to make necessary lifestyle changes in order to prevent alcohol/drug-related problems in other areas of the participants' lives.

(18) Executive Director--The executive director of the department.

(19) Instructor Applicant--A term describing an individual from the period when the individual submits an application for admission into an Instructor training course until the point where certification is granted or denied.

(20) Instructor Certification Period--The period of time beginning with the date Instructor certification was granted to instruct an applicable Offender Education curriculum, and ending two years after the date the certification was issued.

(21) Instructor Training Class--A session of an Instructor training course.

(22) Instructor Training Course--The complete series of Instructor training class sessions.

(23) Minor--A person under the age of 21 years.

(24) Offender Education Class--A session of an Offender Education course.

(25) Offender Education Course--The complete series of Offender Education class sessions.

(26) Offender Education Program (Program)--An Alcohol Education Program for Minors, Drug Offender Education Program, DWI Education Program, or DWI Intervention Program.

(27) Offender Education Provider (Provider)--An individual or entity holding certification of approval from the department to offer or provide the Alcohol Education Program for Minors, Drug Offender Education Program, DWI Education Program, or DWI Intervention Program.

(28) Participant--An individual who attends a department-approved Offender Education Program.

(29) Program/Provider Headquarters--The primary administrative center of a certified Offender Education Provider that is identified as the business address in the Provider's application.

(30) Screening Instrument--A written device approved by the department and required to be administered to each Program participant for the purpose of:

(A) identifying indicators of a potential substance abuse problem; and

(B) making recommendations for further evaluation, where indicated by the screening instrument.

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 August 28, 2017.

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Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-8179



## SUBCHAPTER B. INSTRUCTOR REQUIREMENTS

### 16 TAC §§90.20 - 90.27

The new rules are adopted under Texas Occupations Code, Chapter 51; Alcoholic Beverage Code, Chapter 106, §106.115 (Alcohol Education Program for Minors); Transportation Code, Chapter 521, §§521.374 - 521.376 (Drug Offender Education Program); Code of Criminal Procedure, Chapter 42A, Articles 42A.403, 42A.405 and 42A.406 (formerly Chapter 42, Article 42.12, §13(h)) (DWI Education Program); and Code of Criminal Procedure, Chapter 42A, Articles 42A.404, 42A.405, and 42A.406 (formerly Chapter 42, Article 42.12, §13(j)) (DWI Intervention Program), which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51; Alcoholic Beverage Code, Chapter 106; Transportation Code, Chapter 521; Code of Criminal Procedure, Chapter 42A; and Penal Code,

Chapter 49. No other statutes, articles, or codes are affected by the adoption.

§90.25. *Instructor Teaching and Continuing Education Requirements.*

(a) Drug Offender Education Instructor Requirements.

(1) Each Drug Offender Education Instructor must teach a minimum of four complete Drug Offender Education courses and attend at least one department-sponsored Drug Offender Education Instructor continuing education seminar during the Instructor's certification period, and each subsequent Instructor certification period.

(2) If substantial intervening changes are made to the Drug Offender Education curriculum, or significant updates are required to curriculum material, Instructors for Drug Offender Education shall attend any additional department-sponsored Drug Offender Education Instructor continuing education seminar or special meeting regarding which the department sends them notice.

(3) Instructors who are licensed chemical dependency counselors, licensed professional counselors, licensed psychologists, licensed psychiatrists, or licensed social workers may complete 20 hours of continuing education that is directly drug-related, in lieu of attending the department-sponsored continuing education seminar. If selected for a continuing education audit under §90.26, proof of these continuing education hours must be submitted to the department in a manner prescribed by the department.

(4) Continuing education hours obtained in a department-sponsored Drug Offender Education Instructor continuing education seminar may be used to fulfill the continuing education requirement of another Offender Education certification as long as the seminar occurs during the current certification period and as long as the instructor pays for each certification.

(b) Alcohol Education Program for Minors Instructor Requirements.

(1) Each Alcohol Education Program for Minors Instructor shall teach a minimum of four complete Alcohol Education Program for Minors courses and attend at least one department-sponsored Alcohol Education Program for Minors Instructor continuing education seminar during the Instructor's certification period, and each subsequent Instructor certification period.

(2) If substantial intervening changes are made to the Alcohol Education Program for Minors curriculum, or significant updates are required to curriculum material, Instructors for Alcohol Education Program for Minors shall attend any additional department-sponsored Alcohol Education Program for Minors Instructor continuing education seminar or special meeting regarding which the department sends them notice.

(3) Instructors who are licensed chemical dependency counselors, licensed professional counselors, licensed psychologists, licensed psychiatrists, or licensed social workers may complete 20 hours of continuing education that is directly alcohol-related, in lieu of attending the department-sponsored continuing education seminar. If selected for a continuing education audit under §90.26, proof of these continuing education hours must be submitted to the department in a manner prescribed by the department.

(4) Continuing education hours obtained in a department-sponsored Alcohol Education Program for Minors Instructor continuing education seminar may be used to fulfill the continuing education requirement of another Offender Education certification as long as the seminar occurs during the current certification period and as long as the instructor pays for each certification.

(c) DWI Education Instructor Requirements.

(1) Each DWI Education Instructor shall teach a minimum of four complete DWI Education courses and attend at least one department-sponsored DWI Education Instructor continuing education seminar during the DWI Education Instructor's certification period, and each subsequent Instructor certification period.

(2) If substantial intervening changes are made to the DWI Education curriculum, or significant updates are required to curriculum material, Instructors for DWI Education shall attend any additional department-sponsored DWI Education Instructor continuing education seminar or special meeting regarding which the department sends them notice.

(3) Instructors who are licensed chemical dependency counselors, licensed professional counselors, licensed psychologists, licensed psychiatrists, or licensed social workers may complete 20 hours of continuing education that is directly alcohol-related, in lieu of attending the department-sponsored continuing education seminar. If selected for a continuing education audit under §90.26, proof of these continuing education hours must be submitted to the department in a manner prescribed by the department.

(4) Continuing education hours obtained in a department-sponsored DWI Education Instructor continuing education seminar may be used to fulfill the continuing education requirement of another Offender Education certification as long as the seminar occurs during the current certification period and as long as the instructor pays for each certification.

(d) DWI Intervention Instructor Requirements.

(1) Each DWI Intervention Instructor shall teach a minimum of two complete DWI Intervention courses and attend at least one department-sponsored DWI Intervention Instructor continuing education seminar during the Instructor's certification period, and each subsequent Instructor certification period.

(2) If substantial intervening changes are made to the DWI Intervention curriculum, or significant updates are required to curriculum material, Instructors for DWI Intervention shall attend any additional department-sponsored DWI Intervention Instructor continuing education seminar or special meeting regarding which the department sends them notice.

(3) Instructors who are licensed chemical dependency counselors, licensed professional counselors, licensed psychologists, licensed psychiatrists, or licensed social workers may complete 20 hours of continuing education that is directly alcohol-related, in lieu of attending the department-sponsored continuing education seminar. If selected for a continuing education audit under §90.26, proof of these continuing education hours must be submitted to the department in a manner prescribed by the department.

(4) Team teaching, with no more than two certified instructors, may be counted towards the fulfillment of the teaching requirement.

(5) Continuing education hours obtained in a department-sponsored DWI Intervention Instructor continuing education seminar may be used to fulfill the continuing education requirement of another Offender Education certification as long as the seminar occurs during the current certification period and as long as the instructor pays for each certification.

(e) An Instructor must pay a continuing education seminar fee for each Instructor certification to the department's third party contractor.

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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Executive Director

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## SUBCHAPTER C. PROGRAM/PROVIDER CERTIFICATION REQUIREMENTS

### 16 TAC §§90.30 - 90.34

The new rules are adopted under Texas Occupations Code, Chapter 51; Alcoholic Beverage Code, Chapter 106, §106.115 (Alcohol Education Program for Minors); Transportation Code, Chapter 521, §§521.374 - 521.376 (Drug Offender Education Program); Code of Criminal Procedure, Chapter 42A, Articles 42A.403, 42A.405 and 42A.406 (formerly Chapter 42, Article 42.12, §13(h)) (DWI Education Program); and Code of Criminal Procedure, Chapter 42A, Articles 42A.404, 42A.405, and 42A.406 (formerly Chapter 42, Article 42.12, §13(j)) (DWI Intervention Program), which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51; Alcoholic Beverage Code, Chapter 106; Transportation Code, Chapter 521; Code of Criminal Procedure, Chapter 42A; and Penal Code, Chapter 49. No other statutes, articles, or codes are affected by the adoption.

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## SUBCHAPTER D. PROGRAM REQUIRE- MENTS - CURRICULUM, COURSES, CLASSROOMS, CERTIFICATES

### 16 TAC §§90.40 - 90.49

The new rules are adopted under Texas Occupations Code, Chapter 51; Alcoholic Beverage Code, Chapter 106, §106.115

(Alcohol Education Program for Minors); Transportation Code, Chapter 521, §§521.374 - 521.376 (Drug Offender Education Program); Code of Criminal Procedure, Chapter 42A, Articles 42A.403, 42A.405 and 42A.406 (formerly Chapter 42, Article 42.12, §13(h)) (DWI Education Program); and Code of Criminal Procedure, Chapter 42A, Articles 42A.404, 42A.405, and 42A.406 (formerly Chapter 42, Article 42.12, §13(j)) (DWI Intervention Program), which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51; Alcoholic Beverage Code, Chapter 106; Transportation Code, Chapter 521; Code of Criminal Procedure, Chapter 42A; and Penal Code, Chapter 49. No other statutes, articles, or codes are affected by the adoption.

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## SUBCHAPTER E. PROGRAM REQUIRE- MENTS - ADMINISTRATION AND OTHER RESPONSIBILITIES

### 16 TAC §§90.50 - 90.54

The new rules are adopted under Texas Occupations Code, Chapter 51; Alcoholic Beverage Code, Chapter 106, §106.115 (Alcohol Education Program for Minors); Transportation Code, Chapter 521, §§521.374 - 521.376 (Drug Offender Education Program); Code of Criminal Procedure, Chapter 42A, Articles 42A.403, 42A.405 and 42A.406 (formerly Chapter 42, Article 42.12, §13(h)) (DWI Education Program); and Code of Criminal Procedure, Chapter 42A, Articles 42A.404, 42A.405, and 42A.406 (formerly Chapter 42, Article 42.12, §13(j)) (DWI Intervention Program), which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51; Alcoholic Beverage Code, Chapter 106; Transportation Code, Chapter 521; Code of Criminal Procedure, Chapter 42A; and Penal Code, Chapter 49. No other statutes, articles, or codes are affected by the adoption.

§90.50. *Program Administration.*

(a) Compliance. An Offender Education Program/Provider is responsible for all aspects of Program compliance with this chapter, including any noncompliance related to the conduct of a Program Instructor, Administrator, owner, or other personnel.



(b) Program Administrator.

(1) Each Offender Education Program/Provider must designate an Administrator who must ensure the Program's/Provider's compliance with the administrative requirements of this section and the proper operation of the Program in compliance with all requirements of this chapter.

(2) Nothing in this subsection shall limit the concurrent responsibility of an Administrator or Instructor for that individual's own conduct.

(3) An Administrator must be in good standing as a certified Instructor for the applicable program and must meet all of the requirements of program Instructors.

(4) An Offender Education Program that does not have a currently certified Administrator on record with the department will not be authorized to offer the applicable Offender Education course until the Offender Education Program designates a new, currently certified Administrator and provides written notice to the department of the designation.

(c) Course Fees and Schedules.

(1) An Offender Education Program/Provider must set definite and reasonable course fees. Course fees may not be assessed on a class-by-class basis.

(2) An Offender Education Program must maintain, and make available upon request, written course schedules that include the dates, times, and locations where courses will be held, and the fees charged by the Program.

(3) An Offender Education Program must schedule at least one course each quarter.

(d) Program Records and Audits.

(1) An Offender Education Program/Provider, and its Administrator and Instructors, must maintain, for at least three years, documentation necessary to demonstrate compliance with all applicable requirements of this chapter. This requirement applies to records and documentation created on or after the effective date of this subsection.

(2) Upon request, the Program/Provider, its Administrator, and Instructors must make available or provide to the department at any reasonable time, any of its documents or records, including all records of any Instructor or Administrator, unless otherwise prohibited by law.

(e) Change in Program Information. An Offender Education Program/Provider must notify the department in writing within 30 days of any change in the Provider's headquarters or branch site address(es), telephone number, e-mail address, website address, or change in the Administrator or Instructor(s).

(f) Providing Information to Course Participants. The Offender Education Program/Provider must provide to each course participant:

- (1) the Program/Provider certification number;
- (2) the Instructor certification number; and
- (3) information regarding how to file a complaint with the department.

(g) Referrals.

(1) If an Offender Education Program or Instructor is in a position to or does provide Offender Education referral information to an individual who is required to attend an Offender Education course,

the Offender Education Program or Instructor providing the referral information:

(A) must provide the department's phone number and web address;

(B) must advise the individual concerning the individual's choice to attend any Offender Education Program certified by the department; and

(C) may not require or otherwise attempt to influence an individual to choose a particular Offender Education Program.

(2) This subsection does not prevent a Program or Instructor from providing information specific to the Program or to the Instructor's own Program or course when a prospective participant is specifically requesting information about that particular Program or the Instructor's own Program or course.

(h) Complaint Procedures and Notice.

(1) An Offender Education Program/Provider must establish procedures to resolve participant complaints.

(2) An Offender Education Program/Provider, Administrator, and course Instructor must provide participants with a notice or documentation that contains the name, current mailing address, current telephone number, and website address of the department and a statement that any complaints against the Program or any of its personnel may be directed to the department.

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## SUBCHAPTER F. FEES

### 16 TAC §90.80

The new rules are adopted under Texas Occupations Code, Chapter 51; Alcoholic Beverage Code, Chapter 106, §106.115 (Alcohol Education Program for Minors); Transportation Code, Chapter 521, §§521.374 - 521.376 (Drug Offender Education Program); Code of Criminal Procedure, Chapter 42A, Articles 42A.403, 42A.405 and 42A.406 (formerly Chapter 42, Article 42.12, §13(h)) (DWI Education Program); and Code of Criminal Procedure, Chapter 42A, Articles 42A.404, 42A.405, and 42A.406 (formerly Chapter 42, Article 42.12, §13(j)) (DWI Intervention Program), which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51; Alcoholic Beverage Code, Chapter 106; Transportation Code, Chapter 521; Code of Criminal Procedure, Chapter 42A; and Penal Code,

Chapter 49. No other statutes, articles, or codes are affected by the adoption.

§90.80. Fees.

(a) All fees paid to the department and any charges for program-related materials are non-refundable.

(b) Fees will be assessed in accordance with the following fee schedule:

(1) Offender Education Program/Provider Certification Fees (paid to department):

(A) Initial application fee, including a new Program in a non-adjacent county to the headquarters--\$300 per Program;

(B) Renewal application fee--\$200 per Program;

(2) Branch Site Fees (paid to department):

(A) Initial application fee for a branch site (same or adjacent county to the headquarters)--\$5 per branch site;

(B) Branch site renewal application fee--\$5 per branch site;

(3) Moving/Change of Headquarters Fees (paid to department):

(A) Moving headquarters to a location outside of the county--\$25;

(B) Moving headquarters to a location in the same county--\$25;

(4) Instructor Certification Fees:

(A) initial application fee--\$0;

(B) renewal application fee--\$0;

(5) Instructor Training Course Fees (paid to third party contractor)--\$425 per course;

(6) Continuing Education Seminar Fees (paid to third party contractor)--\$100 per certification per seminar; and

(7) Fees for Program Course Materials must be paid to the third party contractor.

(c) A duplicate/replacement fee for a certification/certificate issued under this chapter is \$25.

(d) A dishonored/returned check or payment fee is the fee prescribed under §60.82 of this title (relating to Dishonored Payment Device).

(e) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).

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SUBCHAPTER G. ENFORCEMENT

16 TAC §§90.91 - 90.94

The new rules are adopted under Texas Occupations Code, Chapter 51; Alcoholic Beverage Code, Chapter 106, §106.115 (Alcohol Education Program for Minors); Transportation Code, Chapter 521, §§521.374 - 521.376 (Drug Offender Education Program); Code of Criminal Procedure, Chapter 42A, Articles 42A.403, 42A.405 and 42A.406 (formerly Chapter 42, Article 42.12, §13(h)) (DWI Education Program); and Code of Criminal Procedure, Chapter 42A, Articles 42A.404, 42A.405, and 42A.406 (formerly Chapter 42, Article 42.12, §13(j)) (DWI Intervention Program), which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51; Alcoholic Beverage Code, Chapter 106; Transportation Code, Chapter 521; Code of Criminal Procedure, Chapter 42A; and Penal Code, Chapter 49. No other statutes, articles, or codes are affected by the adoption.

§90.91. Complaints; Investigations.

(a) Upon verbal or written request from the department, an Offender Education Program, Administrator, Instructor, or any person associated with the Program, must cooperate with the department and furnish requested information concerning any department investigation of a complaint.

(b) If the department is investigating a complaint, the Program/Provider, its Administrator, and Instructors must make available or provide to the department upon request at any reasonable time, any of its documents or records, including all records of any Instructor or Administrator, unless otherwise prohibited by law.

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CHAPTER 119. SANITARIANS

The Texas Commission of Licensing and Regulation (Commission) adopts new rules at 16 Texas Administrative Code (TAC), Chapter 119, §§119.1, 119.3, 119.11, 119.12, 119.20, 119.90 and 119.95, regarding the Sanitarians program, without changes to the proposed text as published in the April 21, 2017, issue of the *Texas Register* (42 TexReg 2123). The rules will not be republished.

The Commission also adopts new rules at 16 TAC, Chapter 119, §§119.2, 119.10, 119.11, 119.13 - 119.15, 119.21, 119.23, 119.24, 119.26, 119.27, 119.70 and 119.80, regarding the Sani-

sanitarians program, with changes to the proposed text as published in the April 21, 2017, issue of the *Texas Register* (42 TexReg 2123). The rules will be republished.

The Texas Legislature enacted Senate Bill 202 (S.B. 202), 84th Legislature, Regular Session (2015), which, in part, transferred 13 occupational licensing programs in two phases from the Department of State Health Services (DSHS) to the Commission and the Texas Department of Licensing and Regulation (Department). The Commission and Department completed the Phase 1 transition of seven programs on October 3, 2016.

Under Phase 2, the following six programs are being transferred from DSHS to the Commission and the Department: (1) Laser Hair Removal, Texas Health and Safety Code, Chapter 401, §§401.501 - 401.522; (2) Massage Therapy, Texas Occupations Code, Chapter 455; (3) Code Enforcement Officers, Texas Occupations Code, Chapter 1952; (4) Sanitarians, Texas Occupations Code, Chapter 1953; (5) Mold Assessors and Remediators, Texas Occupations Code, Chapter 1958; and (6) Offender Education Programs, Alcoholic Beverage Code, Chapter 106, §106.115 (Alcohol Education Program for Minors); Transportation Code, Chapter 521, §§521.374 - 521.376 (Drug Offender Education Program); Code of Criminal Procedure, Chapter 42A, Articles 42A.403, 42A.405 and 42A.406 (formerly Chapter 42, Article 42.12, §13(h)) (DWI Education Program); and Code of Criminal Procedure, Chapter 42A, Articles 42A.404, 42A.405, and 42A.406 (formerly Chapter 42, Article 42.12, §13(j)) (DWI Intervention Program). The statutory amendments transferring regulation of these six Phase 2 programs from DSHS to the Commission and the Department will take effect on September 1, 2017.

The new rules were adopted to enable the Commission and the Department to regulate the six Phase 2 programs listed above. The adopted new rules provide for the Department to perform the various functions, including licensing, compliance, and enforcement, necessary to regulate these transferred programs. The effective date of adopted §§119.1, 119.2 and 119.10 - 119.15 is September 15, 2017, to allow the Department to establish an advisory board. The effective date of the remaining adopted rule sections is November 1, 2017. The effective date will coincide with the completion of the transfer of the programs to the Commission and the Department.

The adopted new §119.1 provides the statutory authority for the Commission and the Department to regulate sanitarians.

The adopted new §119.2 creates the definitions to be used in the sanitarians program.

The adopted new §119.3 establishes the scope of practice for sanitarians.

The adopted new §119.10 creates an advisory committee and describes its composition.

The adopted new §119.11 establishes the advisory committee officers.

The adopted new §119.12 provides for the duties of the advisory committee.

The adopted new §119.13 details the terms and vacancies for the committee.

The adopted new §119.14 explains when the advisory committee shall meet.

The adopted new §119.15 details the reimbursement guidelines for the advisory committee.

The adopted new §119.20 establishes general eligibility requirements for applicants seeking registration.

The adopted new §119.21 details the registration requirements for the sanitarian program.

The adopted new §119.23 explains the educational requirements necessary to obtain registration.

The adopted new §119.24 establishes the examination requirement.

The adopted new §119.26 creates the registration renewal requirements.

The adopted new §119.27 establishes the continuing education requirements.

The adopted new §119.70 establishes standards of conduct for the sanitarians program.

The adopted new §119.80 establishes fees for the sanitarians program.

The adopted new §119.90 allows for administrative penalties and sanctions.

The adopted new §119.95 provides the authority to enforce Texas Occupations Code, Chapter 1953 and this chapter.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the April 21, 2017, issue of the *Texas Register* (42 TexReg 2123). The deadline for public comments was May 22, 2017. The Department held a public hearing during the public comment period on May 11, 2017. During the 30-day public comment period the Department received comments from three interested parties. The public comments received are summarized below.

*Comment--*One commenter suggested requiring new registrants to obtain certification from the National Environmental Health Association as a Registered Environmental Health Specialist / Registered Sanitarian.

*Department Response--*A statutory change would be required in order for the department to implement such a requirement. The Department did not make any changes to the proposed rules based on this comment.

*Comment--*The commenter suggested reducing the minimum numbers of semester hours in basic or applied science to either 16 or 24 hours.

*Department Response--*A statutory change would be required in order for the department to reduce the number of required semester hours. The Department did not make any changes to the proposed rules based on this comment.

*Comment--*The commented suggested that all inspections performed throughout the state should be required to be performed by a registered sanitarian, sanitarian in training, or a person certified as a Registered Environmental Health Specialist / Registered Sanitarian.

*Department Response--*A statutory change would be required in order for the department to implement such a requirement. The Department did not make any changes to the proposed rules based on this comment.

During the rulemaking process the Department conducted a fee analysis for the Sanitarians program. Section 51.202 of the Texas Occupations Code, requires the Commission to set fees in amounts reasonable and necessary to cover the costs of administering the programs under the Department's jurisdiction. Additionally, Article VIII, Section 2 of the General Appropriations Act requires the Department's revenue cover the cost of the Department's appropriations and other direct and indirect costs. The Department found that the fees in the proposed rules are above the amounts that will be required for the Department to cover its costs. Therefore, the Department has reduced the initial registration fee for a sanitarian in training from \$125 to \$120, and the initial registration fee for a sanitarian from \$140 to \$130. In addition, the renewal fee for a sanitarian in training has been reduced from \$125 to \$120, and the renewal fee for a registered sanitarian has been reduced from \$140 to \$110. The decrease in these fees will not adversely affect the administration and enforcement of the program. The reduction in the renewal fee will result in approximately \$16,320 of lost revenue to the state each year.

At its meeting on August 18, 2017, the Commission adopted the proposed rules with changes as recommended by the Department.

### **16 TAC §§119.1, 119.2, 119.10 - 119.15**

The new rules are adopted under Texas Occupations Code, Chapters 51 and 1953, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted are those set forth in Texas Occupations Code, Chapters 51 and 1953. No other statutes, articles, or codes are affected by the adoption.

#### *§119.2. Definitions.*

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

- (1) Act--Occupations Code, Chapter 1953, concerning the registration of sanitarians.
- (2) Advanced mathematics--A mathematics course equivalent to or beyond calculus that was taken at an accredited college or university.
- (3) Advisory Committee--The Registered Sanitarian Advisory Committee.
- (4) Applicant--A person who applies for registration under the Act.
- (5) Applied science--The application of general principles from environmental science, agricultural science, public health, epidemiology, food science, medical science, and sanitary engineering to solve problems.
- (6) Basic science--Science such as anatomy, bacteriology, biochemistry, biology, chemistry, geology, microbiology, pathology, physiology, and physics.
- (7) Consumer health--The application of scientific knowledge to recognize, evaluate, and control hazards associated with the distribution of contaminated, adulterated, unsafe, and misbranded foods, drugs, medical devices, cosmetics, toys, or consumer products.
- (8) Continuing education hour--Fifty minutes of continuing education training or experience, applicable to consumer health,

environmental health or sanitation, and pre-approved by the department or its designee.

(9) Commission--The Texas Commission of Licensing and Regulation.

(10) Department--The Texas Department of Licensing and Regulation.

(11) Environmental health or sanitation--The application of scientific knowledge to recognize, evaluate, and control environmental hazards and to preserve and improve environmental factors for the achievement of the health, safety, comfort, and well-being of humans, to include disaster preparedness and response to suspected or known acts of bioterrorism.

(12) Executive Director--The executive director of the Texas Department of Licensing and Regulation.

(13) Experience--Two years of full-time experience in the fields of consumer health, environmental health, or sanitation.

(14) Full-time experience--Employment, self-employment, or independent contracting for thirty-two hours or more per week in the practice of consumer health, environmental health, or sanitation.

(15) Natural science--Branches of science such as physics, chemistry, and biology that deal with matter, energy, and their interrelations and transformations, or with objectively measurable phenomena.

(16) Registered sanitarian--A department-registered public health professional qualified by specific education, specialized training, and field experience to protect the health, safety, and general welfare of the public from adverse environmental determinants.

(17) Registrant--A person registered under the Act.

(18) Sanitarian in training--A person registered in accordance with §119.21(b).

#### *§119.10. Advisory Committee.*

(a) The commission may establish an advisory committee to provide advice and recommendations to the department on technical matters relevant to the administration of this chapter. The name of the advisory committee shall be the Registered Sanitarian Advisory Committee.

(b) The advisory committee is subject to the Government Code, Chapter 2110, concerning state agency advisory boards.

(c) The advisory committee shall be composed of nine members appointed by the presiding officer of the commission. The composition of the committee shall include:

- (1) five registered sanitarians;
- (2) one professional engineer, or one on-site sewage facility (OSSF) professional who is not and has never been registered as a sanitarian in Texas;
- (3) two consumers, one of which must be a member of an industry or occupation which is regulated either by a city or county environmental health unit or department or equivalent, or by the Department of State Health Services; and
- (4) one person involved in education in the field of public, consumer, or environmental health sciences.

#### *§119.11. Officers.*

(a) The presiding officer of the commission shall, with the approval of the commission, designate a member of the advisory com-

mittee as the presiding officer of the committee to serve for a term of two years.

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

§119.13. *Terms; Vacancies.*

(a) Members of the advisory committee shall serve staggered six-year terms so that the terms of three members will expire on February 1 of each odd-numbered year.

(b) Members shall serve after expiration of their term until a replacement is appointed.

(c) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

(d) A member of the advisory committee may be removed from the committee pursuant to Texas Occupations Code §51.209.

§119.14. *Meetings.*

(a) The advisory committee shall meet at the call of the presiding officer of the commission or the executive director.

(b) A quorum of the advisory committee is necessary to conduct official business.

(c) Committee action shall require a majority vote of those members present and voting.

§119.15. *Reimbursement.*

(a) An advisory committee member serves without compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing duties as a committee member, subject to any applicable limitation on reimbursement provided by the General Appropriations Act.

(b) Expense reimbursements to advisory committee members:

(1) are limited to authorized expenses incurred while traveling to and from committee meetings; and

(2) must be limited to those allowed by the State of Texas Travel Allowance Guide, the department's policies governing employee travel allowances, and the General Appropriations Act.

(c) Expenses may be reimbursed to advisory committee members only when the legislature has specifically appropriated money for that purpose, and only to the extent of the appropriation.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 463-8179



16 TAC §§119.3, 119.20, 119.21, 119.23, 119.24, 119.26, 119.27, 119.70, 119.80, 119.90, 119.95

The new rules are adopted under Texas Occupations Code, Chapters 51 and 1953, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted are those set forth in Texas Occupations Code, Chapters 51 and 1953. No other statutes, articles, or codes are affected by the adoption.

§119.21. *Registration Requirements.*

(a) To be eligible for registration as a sanitarian, an applicant must:

(1) possess a bachelor's degree from an accredited college or university including at least thirty (30) semester hours or its equivalent in a basic or applied science;

(2) possess at least two years of full-time experience in the fields of consumer health, environmental health, or sanitation. Regularly assigned duties must have included consumer health, environmental health, or sanitation. The applicant need not have had the title "sanitarian" or "sanitarian in training". The duties may include the following:

(A) regulatory inspections or evaluations of retail food establishments; retail grocery stores; food warehousing facilities; food manufacturing facilities; food service at special events; mobile food service vehicles and facilities; producer dairy farms; dairy product manufacturing facilities; frozen dessert manufacturing facilities; on-site sewage facilities; asbestos abatement processes; mass gathering events; industrial pretreatment processes (sewage); municipal sewage facilities and wastewater plants; public and semi-public swimming pools; child care facilities; long term care facilities; hospitals; correctional facilities; public and private schools; youth camps; and recreational areas for children; radiation hazards, including lasers and microwaves; and private and public water systems;

(B) site evaluation and design of on-site sewage system facilities as specified in Texas Commission on Environmental Quality rules;

(C) Hazard Analysis and Critical Control Point (HACCP) systems or processes;

(D) investigation of food borne illnesses; water borne illnesses; vector borne illnesses; zoonotic illnesses; food product contamination or adulteration; the environmental conditions surrounding reported elevated blood lead in children and adults; consumer, governmental agency or industry complaints; and animal bites;

(E) performance of vector control activities related to mosquitoes, flies and rodents; environmental assessments; code enforcement activities; and food handler or certified food service manager training;

(F) first responder to hazardous material spills and incidents; and natural and man-made disasters; or

(G) regulatory review of plans and specifications for food establishments; plans and specifications for public, semi-public and private swimming pools; and plans and specifications for on-site sewage systems facilities;

(3) pass the registration examination;

(4) submit the completed department-approved application;

(5) submit the required fees; and

(6) successfully pass a criminal history background check performed by the department.

(b) To be eligible for registration as a sanitarian in training, an applicant must:

(1) possess a bachelor's degree from an accredited college or university including at least thirty (30) semester hours or its equivalent in a basic or applied science;

(2) pass the registration examination;

(3) submit the completed department-approved application;

(4) submit the required fees; and

(5) successfully pass a criminal history background check performed by the department.

(c) A registered sanitarian in training who has obtained the necessary experience to qualify as a sanitarian may file an application to upgrade a registration to that of sanitarian. Upon payment of the required upgrade fee and approval by the department, the applicant shall be granted registration as a sanitarian.

*§119.23. Educational Requirements.*

(a) Courses acceptable to meet the initial educational requirements for examination as a sanitarian or sanitarian in training include the following:

- (1) air pollution;
- (2) anatomy;
- (3) animal science;
- (4) bacteriology;
- (5) biochemistry;
- (6) biology;
- (7) biomedical science;
- (8) biophysics;
- (9) biostatistics;
- (10) botany;
- (11) cell physiology;
- (12) chemical engineering;
- (13) chemistry;
- (14) community health;
- (15) computer science;
- (16) dairy science;
- (17) ecology;
- (18) embryology;
- (19) entomology;
- (20) environmental health;
- (21) environmental science;
- (22) environmental diseases;
- (23) environmental law;
- (24) epidemiology;
- (25) food bacteriology;

(26) food science;

(27) food technology;

(28) genetics;

(29) geophysics;

(30) geology;

(31) hazardous waste;

(32) histology;

(33) hydrogeology;

(34) hydrology;

(35) industrial hygiene;

(36) infectious diseases;

(37) limnology;

(38) mathematics;

(39) courses taken in an accredited allopathic or osteopathic school of medicine;

(40) meteorology;

(41) microbiology;

(42) molecular biology;

(43) occupational health;

(44) occupational safety;

(45) parasitology;

(46) pathology;

(47) physics;

(48) physiology;

(49) plant taxonomy;

(50) public health;

(51) public health education;

(52) public health law;

(53) radiological health;

(54) sanitary engineering;

(55) soil science;

(56) statistics;

(57) toxicology;

(58) vector control;

(59) veterinary medical courses;

(60) veterinary public health;

(61) virology;

(62) wastewater treatment;

(63) water quality; or

(64) zoology.

(b) The courses may be offered by any academic department so long as the course is acceptable.

(c) No more than six semester hours or its equivalent will be acceptable for courses in:

- (1) biophysics;
- (2) computer science;
- (3) embryology;
- (4) mathematics beyond algebra;
- (5) accredited allopathic or osteopathic courses;
- (6) meteorology;
- (7) physics;
- (8) public health education;
- (9) statistics; and
- (10) veterinary medical courses.

(d) Courses considered not acceptable are:

- (1) anthropology;
- (2) archaeology;
- (3) astronomy;
- (4) education;
- (5) geography;
- (6) government;
- (7) history;
- (8) kinesiology;
- (9) languages;
- (10) physical education;
- (11) psychology; and
- (12) sociology.

(e) Courses not listed may be submitted for consideration for acceptance by the department.

*§119.24. Examination for Registration.*

(a) The department shall review all applications prior to the examination. An applicant who meets the education and experience requirements shall be approved to take the examination.

(b) An applicant meeting the requirements for qualifications for registration as a sanitarian or a sanitarian in training who is not currently certified by the National Environmental Health Association (NEHA) as a Registered Environmental Health Specialist/Registered Sanitarian (REHS/RS) shall be approved to take the exam.

(c) The examination shall consist of a written examination prescribed by the department under the supervision of a person or agency designated by the department.

(d) The examination may be administered and graded by:

- (1) the department or the department's designee; or
- (2) the National Environmental Health Association (NEHA) or designee as a part of the certification process for the REHS/RS.

(e) The department or its designee shall notify each applicant of the results of the examination within thirty (30) days of the date of the examination.

(f) A person taking an examination must comply with the department's examination requirements under Chapter 60, Subchapter E of this title.

*§119.26. Registration Renewal.*

(a) A registration issued under this chapter expires two years from the date of issuance.

(b) To renew a registration, an applicant must:

- (1) submit a completed department-approved renewal application;
- (2) complete the continuing education requirement in §119.27;
- (3) submit the required fees; and
- (4) successfully pass a criminal history background check performed by the department.

(c) A registrant must renew the registration every two years, as determined by the department. A sanitarian in training may only renew the registration once, for a total of four years.

(d) Each registrant is responsible for renewing the registration before the expiration date and shall not be excused from paying the renewal fee. Failure to receive notification from the department prior to the expiration date of the registration will not excuse the sanitarian from renewing.

(e) Registration Expiration. A person whose registration has expired may not claim to be a sanitarian or sanitarian in training or use the titles "sanitarian" or "sanitarian in training".

*§119.70. Standards of Conduct.*

(a) A registrant shall not use advertising that is false, misleading, or deceptive, or advertising that is not readily subject to verification, including advertising that:

- (1) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;
- (2) makes a customer or client likely to create an unjustified expectation about the results of a service or procedure;
- (3) compares a professional's service with another professional's services unless the comparison can be factually substantiated;
- (4) causes confusion or misunderstanding as to the credentials, education, or registration of a professional; or
- (5) advertises or represents in the use of a professional name, title, or professional identification that is expressly or commonly reserved to or used by another profession or professional.

(b) A registrant shall notify each client of the name, mailing address, website, and telephone number of the department for the purpose of directing complaints to the department by providing notification:

- (1) on each written contract for services of a registrant;
- (2) on a sign prominently displayed in the primary place of business of each registrant; or
- (3) in a bill for services provided by a registrant to a client or third party.

*§119.80. Fees.*

(a) All fees submitted to the department are nonrefundable.

(b) The schedule of fees is as follows:

- (1) Initial fee for application and registration:
  - (A) sanitarian in training--\$120;

- (B) registered sanitarian--\$130.
- (2) Registration renewal fee:
  - (A) sanitarian in training--\$100;
  - (B) registered sanitarian--\$110.
- (3) Fee to upgrade from a sanitarian in training to a sanitarian--\$25.
- (4) A duplicate/replacement fee for registration certificate--\$25.
- (5) Continuing education sponsor approval fee--\$100 per sponsor. Pre-approved providers are exempt from this fee.
- (6) Late renewal fees for registrations issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).
- (7) A dishonored/returned check or payment fee is the fee prescribed under §60.82 of this title (relating to Dishonored Payment Device).
- (8) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).

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 August 23, 2017.

TRD-201703300  
 Brian E. Francis  
 Executive Director  
 Texas Department of Licensing and Regulation  
 Effective date: November 1, 2017  
 Proposal publication date: April 21, 2017  
 For further information, please call: (512) 463-8179



**TITLE 22. EXAMINING BOARDS**  
**PART 11. TEXAS BOARD OF NURSING**  
**CHAPTER 223. FEES**  
**22 TAC §223.1**

**Introduction.** The Texas Board of Nursing (Board) adopts amendments to §223.1, concerning Fees. The amendments are adopted without changes to the proposed text published in the July 14, 2017, issue of the *Texas Register* (42 TexReg 3534) and will not be republished.

**Reasoned Justification.** The amendments are adopted under the authority of the Occupations Code §301.151 and §301.155 and the Health and Safety Code §105.011 and are necessary to comply with the statutory requirements of Senate Bill (SB) 1 (the General Appropriations Act for the years ending August 31, 2018, and August 31, 2019); House Bill (HB) 280; and HB 2950, all enacted during the 85th legislative session.

SB 1 includes a contingency revenue rider, which requires the Board to raise an additional \$759,439 to fund nursing salary adjustments, increased funding for the Board's peer assistance program, and legal costs. Additionally, the Board estimates an

additional \$667,000 will be needed to fund the requirements of HB 280. HB 280 creates a grant program to fund innovative approaches to reducing verbal and physical workplace violence against nurses. The Board also estimates an additional \$50,050 will be needed to meet the budgetary implications of HB 2950. HB 2950 requires the removal of certain disciplinary actions from its website. The Board estimates it must raise \$1,476,489 to meet these requirements of SB 1, HB 280, and HB 2950. In order to meet these requirements, the Board is adopting amendments related to its licensure renewal fees for registered nurses (RNs) and licensed vocational nurses (LVNs).

The adopted amendments will increase the renewal fee for licensed vocational nurses by \$2 per biennium, resulting in a new renewal fee of \$42 for licensed vocational nurses. The adopted amendments will also increase the renewal fee for registered nurses by \$5 per biennium, resulting in a new renewal fee of \$65 for registered nurses. The Board anticipates a total generated revenue amount of \$1,700,000 as a result of these increased fees, which should be sufficient to meet the budgetary requirements of SB 1, HB 280, and HB 2950.

**How the Section Will Function.** Adopted amended §223.1(a)(3)(A) sets the licensure renewal fee for registered nurses at \$65 each biennium. Adopted amended §223.1(a)(3)(B) sets the licensure renewal fee for licensed vocational nurses at \$42 each biennium.

**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 §301.151 and §301.155 and the Health and Safety Code §105.011.

Section 301.151 of the Occupations Code 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.

Section 301.155(a) of the Occupations Code provides that the Board by rule shall establish fees in amounts reasonable and necessary to cover the costs of administering Chapter 301.

Section 105.011 of the Health and Safety Code provides that, to the extent funding is available, the nursing resource section established under §105.002 shall administer a grant program to fund innovative approaches for reducing verbal and physical violence against nurses in hospitals, freestanding emergency medical care facilities, nursing facilities, and home health agencies.

Section 105.011(f) provides that the nursing resource section may use money transferred to the department from the Texas Board of Nursing under §301.155 of the Occupations Code to fund the grants authorized by this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2017.

TRD-201703312



Jena Abel  
Deputy General Counsel  
Texas Board of Nursing  
Effective date: September 13, 2017  
Proposal publication date: July 14, 2017  
For further information, please call: (512) 305-6822

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**PART 14. TEXAS OPTOMETRY BOARD**

**CHAPTER 271. EXAMINATIONS**

**22 TAC §271.2**

The Texas Optometry Board adopts amendments to §271.2 of Chapter 271, Title 22, without changes to the proposed text as published in the June 23, 2017, issue of the *Texas Register* (42 TexReg 3224).

The amendments implement changes to Texas Optometry Act §351.254(a) and §351.2526, and insure compliance with federal law.

No comments were received.

The amendments are adopted under the Texas Optometry Act, Texas Occupations Code, §351.151, and Senate Bill 314, 85th Legislature, Regular Session. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets Senate Bill 314, 85th Legislature, Regular Session, as amending the Optometry Act to remove certain application requirements and require accessing information in a national databank.

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 August 22, 2017.

TRD-201703268  
Chris Kloeris  
Executive Director  
Texas Optometry Board  
Effective date: September 11, 2017  
Proposal publication date: June 23, 2017  
For further information, please call: (512) 305-8500

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**CHAPTER 273. GENERAL RULES**

**22 TAC §273.8**

The Texas Optometry Board adopts amendments to §273.8 of Chapter 273, Title 22, without changes to the proposed text published in the June 23, 2017, issue of the *Texas Register* (42 TexReg 3225).

The amendments implement changes to Texas Optometry Act §351.3045 and clarify notice requirements for license renewal.

No comments were received.

The amendments are adopted under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.303, and Senate

Bill 314, 85th Legislature, Regular Session. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. Section 351.303 requires notice of license expiration. The agency interprets Senate Bill 314, 85th Legislature, Regular Session as amending the Optometry Act to require all licensees to submit a fingerprint complete criminal history report.

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 August 22, 2017.

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Chris Kloeris  
Executive Director  
Texas Optometry Board  
Effective date: September 11, 2017  
Proposal publication date: June 23, 2017  
For further information, please call: (512) 305-8500

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**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

**PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT**

**CHAPTER 65. WILDLIFE**

**SUBCHAPTER B. DISEASE DETECTION AND RESPONSE**

In a duly noticed meeting on August 24, 2017, the Texas Parks and Wildlife Commission adopted new §65.83 and amendments to §65.86 and §65.91, concerning Disease Detection and Response. New §65.83 is adopted with changes to the proposed text as published in the July 21, 2017, issue of the *Texas Register* (42 TexReg 3619). The amendments to §65.86 and §65.91 are adopted without changes and will not be republished.

The change to §65.83 eliminates paragraph (2), which is superfluous. As proposed, paragraph (2) stipulated that TC 3 deer breeding facilities located with a Containment Zone (CZ) or Surveillance Zone (SZ) must be in compliance with §65.94, concerning Breeding Facility Minimum Movement Qualification and §65.95, concerning Movement of Breeder Deer, in order to release deer to immediately adjoining acreage, which was intended as a point of clarification. Because paragraph (4) requires all deer breeding facilities to be in compliance with all applicable provisions of Chapter 65, Subchapter B (which includes §65.94 and §65.95), paragraph (2) is unnecessary. Therefore, the change removes paragraph (2) and redesignates the remaining provisions accordingly.

The change to §65.93 also eliminates language in paragraph (3) (paragraph (4) as proposed) alluding to herd orders issued by the Texas Animal Health Commission (TAHC) signed by the permit holder. The department has determined that the language as proposed is unnecessary because a TAHC hold order is not valid unless it is signed.

New §65.83, concerning Special Provisions, allows for the release of breeder deer from a TC 3 facility within a Containment Zone (CZ) or Surveillance Zone (SZ) to adjoining acreage under the same ownership, provided the release is authorized under a herd plan issued by the Texas Animal Health Commission (TAHC), which may also specify testing requirements, and the facility is in compliance with all applicable provisions of the subchapter unless exempted by a herd plan. In a recent rulemaking, the department liberalized certain provisions of Subchapter B, Division 1 that relate to the movement of live deer to or from deer breeding facilities within a CZ. Those liberalizations allowed for the release of breeder deer in a SZ from a deer breeding facility located outside a SZ if authorized by Division 2 of this subchapter, but inadvertently resulted in a complete prohibition on the release of breeder deer from TC 3 facilities located within a CZ or SZ. The department intended to allow for release of breeder deer from a TC 3 breeding facility located within a CZ or SZ and designated under the provisions of Division 2 as movement qualified (MQ), provided that facility is operating under a herd plan that authorizes the release of deer to adjoining acreage under the same ownership and is in compliance with all applicable provisions of this subchapter unless exempted by a herd plan. The new section remedies that oversight.

The amendments to §65.86, concerning Preemption, and §65.91, concerning General Provisions, alter the provisions of those sections to achieve the intended harmonization of the provisions of Subchapter B, Division 1 with the provisions of Subchapter B, Division 2 and the remainder of Chapter 65. In 2013 the department adopted §§65.80-65.82 and 65.84-65.89 in response to the discovery of chronic wasting disease (CWD) in far west Texas. The rules created mechanisms to contain and limit the spread of CWD following discovery. At that time, §§65.80-65.82 and 65.84-65.89 constituted the entirety of Subchapter B; however, in 2016 the department adopted §§65.90-65.99 to address the discovery of CWD in deer breeding facilities, which necessitated the designation of §§65.80-65.82 and 65.84-65.89 as Division 1 and §§65.90-65.99 as Division 2. The provisions of §65.86 currently refer to the resolution of conflicts between Subchapter B and any other subchapter of Chapter 65, and should be altered to apply to conflicts between Division 1 and Division 2 of Subchapter B and conflicts between Division 1 of Subchapter B and any other subchapter of Chapter 65. The amendment to §65.86 accomplishes that. The amendment to §65.91 similarly clarifies the relationships between Division 2, Division 1, and the remainder of Chapter 65.

The department has engaged in a number of rulemakings to address, contain, and manage chronic wasting disease following its discovery in Texas in both captive and free-ranging populations. CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (referred to collectively as susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle and commonly known as "Mad Cow Disease"), and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Much remains unknown about CWD. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other

species are still being investigated. What is known is that CWD is invariably fatal to certain species of cervids, and is transmitted both directly (through animal-to-animal contact) and indirectly (through environmental contamination). Moreover, a high prevalence of the disease in free-ranging populations correlates with deer population declines and human dimensions research indicates that hunters will avoid areas of high CWD prevalence. If CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion dollar ranching, hunting, wildlife management, and real estate economies could be significant.

The department received two comments opposing adoption of the proposed rules. Both commenters provided a reason or rationale for opposing adoption.

One commenter opposed adoption and stated that deer breeding should not be permitted. The department disagrees with the comment and responds that under Parks and Wildlife Code, Chapter 43, Subchapter L, the department is required to issue a deer breeding permit to a qualified person. No changes were made as a result of the comment.

One commenter opposed adoption and stated opposition to rules concerning coastal fisheries, which isn't germane to this rulemaking. No changes were made as a result of the comment.

The department received eight comments supporting adoption of the proposed rules.

## DIVISION 1. CHRONIC WASTING DISEASE (CWD)

### 31 TAC §65.83, §65.86

The amendment and new section are adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter C, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation; Subchapter E, which requires the commission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds, urban white-tailed deer removal, and trapping and transporting surplus white-tailed deer; Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter; Subchapter R, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that white-tailed deer may be temporarily detained in an enclosure; Subchapter R-1, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that mule deer may be temporarily detained in an enclosure (although the department has not yet established a DMP program for mule deer authorized by Subchapter R-1); and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

#### *§65.83. Special Provisions.*

A TC 3 breeding facility located in a CZ or SZ may release breeder deer to adjoining acreage under the same ownership, provided:

- (1) the title in the county deed records reflects that the surface of the release site and of the breeding facility is held by the same owner or owners;

(2) the release is specifically authorized in a herd plan prepared for the facility by the Texas Animal Health Commission and TPWD; and

(3) the TC 3 breeding facility that releases breeder deer under the provisions of this section is in compliance with all applicable provisions of this subchapter, including provisions relating to the testing of released breeder deer, except as specifically exempted under a herd plan prepared and approved by the department and TAHC.

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 August 24, 2017.

TRD-201703327

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Effective date: September 13, 2017

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For further information, please call: (512) 389-4775



## DIVISION 2. CHRONIC WASTING DISEASE - MOVEMENT OF DEER

### 31 TAC §65.91

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter C, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation; Subchapter E, which requires the commission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds, urban white-tailed deer removal, and trapping and transporting surplus white-tailed deer; Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter; Subchapter R, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that white-tailed deer may be temporarily detained in an enclosure; Subchapter R-1, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that mule deer may be temporarily detained in an enclosure (although the department has not yet established a DMP program for mule deer authorized by Subchapter R-1); and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

The 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 D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

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Proposal publication date: July 21, 2017

For further information, please call: (512) 389-4775



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 9. PROPERTY TAX ADMINISTRATION

##### SUBCHAPTER F. LIMITATION ON APPRAISED VALUE ON CERTAIN QUALIFIED PROPERTIES

###### 34 TAC §§9.1051, 9.1052, 9.1055, 9.1058

The Comptroller of Public Accounts adopts amendments to §9.1051, concerning definitions; and §9.1052, concerning forms, with changes to the proposed text as published in the May 12, 2017, issue of the *Texas Register* (42 TexReg 2523). The comptroller adopts amendments to §9.1055 concerning comptroller application review and agreement to limit appraised value, and §9.1058 concerning miscellaneous provisions, without changes to the proposed text as published in the May 12, 2017, issue of the *Texas Register* (42 TexReg 2523).

The amendments to §9.1051 update the name of the division of the comptroller's office responsible for administration of Tax Code, Chapter 313 in paragraph (13) from the Economic Development and Analysis Division or ED&A to the Data Analysis and Transparency Division or DAT; and update the website for the United States Census Bureau in paragraph (25).

The amendments to §9.1052 update the toll-free phone number for requesting forms from the comptroller and the web address for viewing and downloading forms on the comptroller's website, and change "web site" to "website" in subsection (b). The amendments to §9.1052 also adopt by reference two existing forms with changes. In the form adopted by reference in subsection (a)(2), Section 4 on qualified property is being changed to request the county appraisal district in which the project is located, the total market value of all qualified property from all county appraisal district property records subject to the 313 agreement, the total value of all applicable exemptions for the qualified property, the total taxable value for school interest and sinking tax purposes for the qualified property, the limitation amount on appraised value specified as qualified in the 313 agreement, and the total taxable value for school maintenance and operations tax purposes for the qualified property. In the form adopted by reference in subsection (a)(2), Section 5B on wage and employment information for applications after January 1, 2014 is being changed to include the same questions in Section 5A, number 8; and the rule defining qualifying jobs, that is, 34 TAC §9.1051(30), is being included in Section 5B question 6; and parts of the titles for Sections 5A and 5B are being modified to boldface font.

The amendment to §9.1055, subsection (a)(5) requires documents that are submitted to the comptroller in an electronic for-

mat to be in compliance with the accessibility standards and specifications described in 1 TAC Chapters 206 and 213.

The amendments to §9.1058 corrects a typographical error in subsection (a) by replacing the word "contract" with "contact" and changes "web site" to "website" in subsection (d)(1). New subsection (f) clarifies the scope of "series of agreements" as referenced in Tax Code, §313.027.

Two comments were received from Renn Neilson and Matt Larsen with Baker Botts LLP and Kevin O'Hanlon with O'Hanlon, Demerath & Castillo Attorneys and Counselors at Law.

Mr. Neilson, Mr. Larsen and Mr. O'Hanlon suggest that the comptroller can accomplish its goal to restrict partial assignments without adopting proposed §9.1051(31) by exercising its discretion to reject them as authorized under Sections 10.2 and 10.3 of Form 50-826 Texas Economic Development Act Agreement. The comptroller agrees with this comment and declines to adopt the definition of assignment in proposed §9.1051(31), which would have prohibited all partial assignments. For consistency, the comptroller also declines to adopt the proposed new language in Form 50-772, which states "Applicable only to certain 3-digit projects" and the proposed new language in Form 50-773A which states "Only 3-digit projects may have partial assignments".

In addition, Mr. Neilson and Mr. Larsen comment that §9.1055(a)(5) would be burdensome on applicants and suggest that either the comptroller charge a small additional application fee for Americans with Disability Act (ADA) accessibility conversions, or consider providing certain convertible forms and guidance on ADA accessibility conversions. The comptroller disagrees with this comment and declines to make the suggested changes. The comptroller cannot post substantive documents or information submitted by applicants on its website that are not accessible to persons with disabilities because of Texas state and federal accessibility laws. The comptroller has, therefore, determined that electronic and information resources (EIR) compliance is accomplished most effectively and efficiently by requiring applicants to submit already-accessible documents or information. Although compliance with proposed §9.1055(a)(5) may require an applicant at the outset to spend some amount of time researching or selecting its preferred method for creating accessible documents or information, the comptroller does not anticipate that amount of time to be significant, or that compliance with the rule as adopted will represent an ongoing burden upon applicants. Rather, the comptroller expects applicants to consider the variety of accessibility tools available and ultimately choose tools that are best-suited to the applicant's needs with respect to time and cost-saving qualities. The Texas Department of Information Resources is a good resource for information on both free and paid accessibility tools and information, and the comptroller encourages applicants to review that agency's guidance available here: <http://dir.texas.gov/View-Resources/Pages/Content.aspx?id=36>. Additional guidance on accessibility may also be provided to applicants on the Chapter 313 program's website upon adoption of these rules.

The amendments are adopted under Tax Code, §313.031, which authorizes the comptroller to adopt rules necessary for the implementation and administration of Tax Code, Chapter 313.

The amendments implement Tax Code, Chapter 313.

*§9.1051. Definitions.*

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

otherwise. Words defined in Tax Code, Chapter 313 and not defined in this subchapter shall have the meanings provided by Tax Code, Chapter 313.

(1) Agreement--The written agreement between the governing body of a school district and the approved applicant on the form adopted by reference in §9.1052 of this title (relating to Forms) to implement a limitation on the appraised value for school district maintenance and operations ad valorem property tax purposes on an entity's qualified property, required by Tax Code, §313.027(d).

(2) Applicant--An entity that has applied for a limitation on appraised value for school district maintenance and operations ad valorem property tax purposes on the entity's property as provided by Tax Code, Chapter 313.

(3) Application--An application for limitation of appraised value limitation for school district maintenance and operations ad valorem property tax purposes on an entity's qualified property on the form adopted by reference in §9.1052 of this title, the schedules attached thereto, and the documentation submitted by an entity for the purpose of obtaining an agreement for a limitation on appraised value from a school district.

(4) Application amendment--Information submitted by an applicant intended to be considered as part of or in support of the application that amends by replacing information that was previously submitted by applicant.

(5) Application supplement--Information submitted by an applicant intended to be considered as part of or in support of the application that has not been previously submitted.

(6) Approved applicant--An applicant whose application has been approved by a school district for a limitation on appraised value agreement according to the provisions of Tax Code, Chapter 313, including any assignees of that applicant.

(7) Application review start date--The later date of either the date on which the school district issues its written notice that an applicant has submitted a completed application or the date on which the comptroller issues its written notice that an applicant has submitted a completed application.

(8) Appraisal district--The county appraisal district that would appraise the property which is the subject of an application.

(9) Appraised value--The value of property as defined by Tax Code, §1.04(8).

(10) Completed application--An application in the form and number and containing all the information required pursuant to §9.1053 of this title (relating to Entity Requesting Agreement to Limit Appraised Value) that has been determined by the school district and the comptroller to include all minimum requirements for consideration.

(11) Comptroller--The Texas Comptroller of Public Accounts or the designated representative of the Texas Comptroller of Public Accounts acting on behalf of the comptroller.

(12) Entity--Any entity upon which a tax is imposed by Tax Code, §171.001 including a combined group as defined by Tax Code, §171.0001(7) or members of a combined group, provided however, an entity as defined herein does not include a sole proprietorship, partnership or limited liability partnership.

(13) Data Analysis and Transparency Division or DAT--The Data Analysis and Transparency Division of the comptroller's office, or the division of the comptroller's office responsible for the ad-

ministration of Tax Code, Chapter 313, acting through the designated division director or a representative thereof.

(14) Non-qualifying job--A permanent position of employment to perform work:

(A) that includes at a minimum the following requirements:

(i) that is based on the qualified property;

(ii) that is in direct support of activity identified in Tax Code, §313.024(b);

(iii) for at least 1,600 hours a year;

(iv) over which the applicant has significant degree of control of:

(I) the creation of the job;

(II) the job description;

(III) the job characteristics or performance of the job through either a business, contractual or vendor relationship; and

(B) is not a qualifying job as that term is defined in Tax Code, §313.021(3) and these rules.

(15) Qualified investment--Property that meets the requirements of Tax Code, §313.021(1).

(16) Qualified property--Land, new building, or new improvement erected or affixed to the land after the application review start date, or eligible tangible personal property first placed in service after the application review start date that:

(A) meets the requirements of Tax Code, §313.021(2), and that is used either as an integral part, or as a necessary auxiliary part, in manufacturing, research and development, a clean coal project, an advanced clean energy project, renewable energy electric generation, electric power generation using integrated gasification combined cycle technology, nuclear electric power generation, a Texas Priority Project, or a computer center;

(B) is clearly distinguished from any existing property and clearly distinguished from any proposed property that is not a new improvement;

(C) is separate from, and not a component of, any existing property;

(D) if buildings or improvements, did not exist before the application review start date or if tangible personal property, was first placed in service after the application review start date;

(E) is not used to renovate, refurbish, upgrade, maintain, modify, improve, or functionally replace existing buildings or existing improvements;

(F) does not replace or modify existing buildings other than expansion of an existing building; and

(G) is not used solely for the transportation of product prior to the commencement, or subsequent to the completion, of an applicable qualifying activity described in subparagraph (A) of this paragraph.

(17) School district--A school district that has received an application for a limitation on appraised value pursuant to Tax Code, Chapter 313 or the designated representative of the school district acting on behalf of the school district.

(18) SOAH--State Office of Administrative Hearings.

(19) Substantive document--A document or other information or data in electronic media determined by the comptroller to substantially involve or include information or data significant to an application, the evaluation or consideration of an application, or the agreement or implementation of an agreement for limitation of appraised value pursuant to Tax Code, Chapter 313. The term includes, but is not limited to, any application requesting a limitation on appraised value and any amendments or supplements, any economic impact evaluation made in connection with an application, any agreement between applicant and the school district and any subsequent amendments or assignments, any school district written finding or report filed with the comptroller as required under this subchapter, and any completed Annual Eligibility Report (Form 50-772A) submitted to the comptroller.

(20) Agreement holder--An entity that has executed an agreement with a school district.

(21) Average weekly wage for manufacturing jobs--Either the average weekly wage:

(A) for all jobs primarily engaged in activities described in Sectors 31 - 33 of the 2007 North American Industry Classification System in a county as identified by the Texas Workforce Commission's Quarterly Employment and Wages (QCEW) webpage at <http://www.tracer2.com/cgi/dataanalysis/AreaSelection.asp?tableName=Industry>; or

(B) for all manufacturing jobs or if the information for subparagraph (A) of this paragraph is not available, as determined by data published annually by the Texas Workforce Commission for the purposes of Tax Code, Chapter 313 for each Council of Government Region, based on Bureau of Labor Statistics, Texas Occupational Employment and Wages (OES) data, as it is posted at <http://www.tracer2.com/admin/uploadedPublications/COGWages.pdf>.

(22) Average weekly wage for non-qualifying jobs--The average weekly wage as identified by the Texas Workforce Commission Quarterly Employment and Wages (QCEW) average weekly wages for all private industries for the most recent four quarterly periods for which data is available at the time that an application is deemed complete, as it is posted at <http://www.tracer2.com/cgi/dataanalysis/AreaSelection.asp?tableName=Industry>.

(23) First placed in service--The first use of the property by the agreement holder.

(24) New improvement--A building, structure, or fixture that, after the application review start date:

(A) is a discrete unit of property erected on or affixed to land eligible to be qualified property; and

(B) is not erected or affixed as part of maintenance, renovation, refurbishment, improvement, modification, or upgrade of existing property, nor is newly added or proposed to be added property functionally replacing existing property, provided however that a proposed improvement may be considered a new improvement if it is an addition to an existing building that will contain new tangible personal property that did not exist before the application review start date.

(25) Per capita income--Per capita money income in the past 12 months as determined by the United States Census Bureau and reported at its website <http://www.census.gov>.

(26) Strategic investment area--An area that is:

(A) a county within this state with unemployment above the state average and per capita income below the state average;

(B) an area within this state that is a federally designated urban enterprise community or an urban enhanced enterprise community; or

(C) a defense economic readjustment zone designated under Government Code, Chapter 2310.

(27) Texas Economic Development Act Agreement--The form, adopted by reference in §9.1052 of this title, which provides a template for the terms of an agreement to implement a limitation on appraised value on property within a school district and that has the title Agreement For Limitation On Appraised Value Of Property For School District Maintenance And Operations Taxes.

(28) Texas Priority Project--A project on which the applicant commits to place in service qualified investment of more than \$1 billion during the qualifying time period, based on the comptroller review of the application submitted by the school district.

(29) Unemployment--The most recent calendar year unemployment rate, not seasonally adjusted, as determined by the Labor Market & Career Information Department (LMCI) of the Texas Workforce Commission and reported at its website <http://www.tracer2.com/cgi/dataanalysis/AreaSelection.asp?table-Name=Labforce>.

(30) Qualifying job--A permanent position of employment that includes at a minimum the following requirements:

(A) provides work for at least 1600 hours a year;

(B) is in direct support of activity identified in Tax Code, §313.024(b);

(C) is based on the qualified property;

(D) is a job over which the applicant has significant degree of control of:

(i) the creation of the job;

(ii) the job description;

(iii) the job characteristics or performance of the job through either a business, contractual or vendor relationship;

(E) is covered by a group health benefit plan for which the applicant offers to pay at least 80% of the premiums or other charges assessed for employee-only coverage under the plan, regardless of whether an employee may voluntarily waive the coverage;

(F) pays at least 110% of the county average weekly wage for manufacturing jobs in the county where the job is located;

(G) that has not been transferred from another part of the state; and

(H) that has not been created to replace a previous employee.

§9.1052. *Forms.*

(a) The comptroller adopts by reference the following forms:

(1) Application for Appraised Value Limitation on Qualified Property (Form 50-296A);

(2) Annual Eligibility Report (Form 50-772A);

(3) Biennial Progress Report for Texas Economic Development Act (Form 50-773A);

(4) Job Creation Compliance Report (Form 50-825);

(5) Biennial School District Cost Data Request (CDR) (Form 50-827); and

(6) Texas Economic Development Act Agreement (Form 50-826).

(b) Copies of the forms are available for inspection at the office of the Texas Register or may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528. The forms may be viewed or downloaded from the comptroller's website, at <https://www.comptroller.texas.gov/economy/local/ch313/forms.php>. Copies may also be requested by calling our toll-free number, (800) 531-5441, extension 34679.

(c) In special circumstances, a school district may obtain prior approval in writing from the comptroller to use an application or agreement form that requires additional information, or sets out the required information in different language or sequence than that which this section requires.

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 August 22, 2017.

TRD-201703263

Lita Gonzalez

General Counsel

Comptroller of Public Accounts

Effective date: September 11, 2017

Proposal publication date: May 12, 2017

For further information, please call: (512) 475-0387



## PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

### CHAPTER 67. HEARINGS ON DISPUTED CLAIMS

#### 34 TAC §67.201

The Employees Retirement System of Texas (ERS) adopts amendments to 34 Texas Administrative Code (TAC) Chapter 67, concerning Hearings on Disputed Claims, §67.201, concerning Procedures Governing Bid Protests, without changes to the proposed text as published in the July 7, 2017, issue of the *Texas Register* (42 TexReg 3473). The amendments were approved by the ERS Board of Trustees at its August 23, 2017, meeting. This section will not be republished.

Section 67.201, Procedures Governing Bid Protests, is amended to update the roles of ERS staff involved in the bid protest process due to the reorganization of procurement functions within ERS. Vendors will file formal bid protests with the Director of Procurement and Contract Oversight. The amendment also directs when a protest must be filed in order to be filed timely and takes into consideration recent updates to the Comptroller of Public Accounts' bid protest rules.

The amendment also broadens when a protesting party may be required to post a bond, and permits ERS to require a bond when it is necessary for ERS to utilize professional services by actuaries, consultants or other professionals in its efforts to resolve the protest. Posting of a bond in these instances is in the best interest of the expenditure of ERS' trust funds and is necessary to limit or prevent the filing of protests that are frivolous, filed in bad faith, filed for the purpose of delaying the solicitation and/or

award process, or for other reasons not supported by applicable law and facts.

No comments were received on the proposed rule amendments.

The amendments are adopted under Texas Government Code §815.102(a)(4) and (5), which provide authorization for the ERS Board of Trustees to adopt rules for hearings on contested cases or disputed claims and the transaction of any other business of the Board.

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 August 23, 2017.

TRD-201703301

Paula A. Jones

Deputy Executive Director and General Counsel

Employees Retirement System of Texas

Effective date: September 12, 2017

Proposal publication date: July 7, 2017

For further information, please call: (877) 275-4377



## PART 11. TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

### CHAPTER 306. CREDITABLE SERVICE FOR MEMBERS OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

#### 34 TAC §306.3

The State Board of Trustees (Board) of Texas Emergency Services Retirement System (System) adopts new §306.3, relating to Qualified Service Credit for Eligible Active Military Duty, without changes to the proposed text as published in the June 30, 2017, issue of the *Texas Register* (42 TexReg 3349).

New §306.3 is adopted to conform with provisions in the Uniformed Services Employment and Re-Employment Rights Act (38 U.S.C. §4301 et seq.) (USERRA) as required by Title 8, Texas Government Code, Subtitle H, Texas Emergency Services Retirement System, §863.002. Section 863.002 requires the System to grant qualified services credit for military duty in accordance with §414(u) of the Internal Revenue Code of 1986 (26 U.S.C. §414(u)) and other applicable federal law. The System is required to adopt rules to address credit for military service as contemplated by USERRA. The new rule outlines the policy by which the System will verify military service, set deadlines, and collect payment for creditable service that a System member in active military service may receive.

The Board received no public comment on the proposal.

The new §306.3, relating to Qualified Service Credit for Eligible Active Military Duty is adopted under the authority granted in Title 8, Texas Government Code, Subtitle H, Texas Emergency Services Retirement System §863.002, §865.006(b).

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 August 21, 2017.

TRD-201703257

Kevin Deiters

Executive Director

Texas Emergency Services Retirement System

Effective date: September 10, 2017

Proposal publication date: June 30, 2017

For further information, please call: (512) 936-3372



## CHAPTER 310. ADMINISTRATION OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

### 34 TAC §310.6

The State Board of Trustees (Board) of Texas Emergency Services Retirement System (System) published notice of a proposed amendment to §310.6 of Title 34 in the June 30, 2017, issue of the *Texas Register* (42 TexReg 3350). The amended section is adopted with changes to clarify language regarding contributions to the System. The amended section also has the purpose of clarifying how new and existing rules affect payable contributions regarding members who fall under the Uniformed Services Employment and Re-Employment Rights Act (38 U.S.C. §4301 et seq.) (USERRA), Family and Medical Leave Act of 1993 (29 U.S.C. §2601 et seq.) (FMLA), and temporary disability.

The Board has received no public comment on the amended section., and adopts amendments to §310.6 as published in the June 30, 2017, issue of the *Texas Register* (42 TexReg 3350), with an adoption of a correction of error as published in the July 21, 2017, issue of the *Texas Register* (42 TexReg 3665) due to an error in submission by the System. To correct the error, the board omits "during a period of temporary disability or" found in subsection (e) in the June 30th issue of the *Texas Register* (42 TexReg 3350). The correction of error affects no new person, entities, or subjects other than those given notice under the proposed amendment to §310.6.

The State Board of Trustees (Board) of Texas Emergency Services Retirement System (System) adopts amendments to §310.6 relating to Local Contributions under authority granted by Title 8, Texas Government Code, Subtitle H, Texas Emergency Services Retirement System, §865.014.

#### §310.6. *Local Contributions.*

(a) Except as otherwise provided by this section, each participating department shall make a contribution for each month in which a volunteer or auxiliary employee of the participating department is a member of the pension system. The monthly contribution is composed of two parts, as outlined in subsections (b) and (c) of this section. Contributions are payable for each month of service regardless of whether the member receives a year of qualified service. Contributions are payable as provided by §865.014, Government Code, and §310.8 of this title. Contributions required under this section are not considered compensation to the members for whom they are made.

(b) The Part One contribution is the portion of the participating department's contribution that is used for purposes of calculating the benefit of a member as provided in §308.2 of this title. The Part One contribution will be no less than the minimum contribution amount provided in subsection (d) of this section.

(c) The Part Two contribution is the portion of the participating department's contribution that is applied to reduce the unfunded actuarial accrued liability of the pension system as contemplated under §861.001(1) and §864.002(a)(1), Government Code. The Part Two contribution is not used for purposes of calculating the benefit of a member as provided in §308.2 of this title. The state board may establish or modify the Part Two contribution based on the pension system's most recent actuarial valuation approved by the state board, but in no case shall the Part Two contribution exceed 15 percent of the participating department's Part One contribution. Any Part Two contribution established or modified by the state board will be effective beginning on September 1 following the state board's approval of such Part Two contribution. A participating department shall make the Part Two contribution for each month as provided in subsection (a) of this section.

(d) The minimum contribution rate for each participating department is \$36 per member. After August 31, 2015, the minimum contribution rate for each participating department is \$36 per member plus any Part Two contribution that might be charged by the pension system, as provided in subsection (c) of this section. A participating department may elect to make Part One contributions at a rate greater than the minimum contribution amount by notifying the Executive Director in writing of the rate.

(e) Contributions are payable when leave is taken under the Family and Medical Leave Act of 1993 (29 U.S.C. §2601 et seq.). Contributions are not payable during a period of temporary disability.

(f) Contributions are not immediately payable during a period of military leave while on active military duty if (1) the military duty constitutes qualified military service in uniformed services, as provided under the Uniformed Services Employment and Re-Employment Rights Act, 38 United States Code §4301 et seq. (USERRA) and (2) the member is designated as on military leave by the pension system upon receiving documentation from the participating department that substantiates such active military duty under procedures developed by the pension system pursuant to Rule §306.3(c). Contributions for the period of active military duty shall be paid by the participating department upon the member's return to the participating department in accordance with Rule §306.3(e) and as required by USERRA.

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 August 21, 2017.

TRD-201703260  
Kevin Deiters  
Executive Director  
Texas Emergency Services Retirement System  
Effective date: September 10, 2017  
Proposal publication date: June 30, 2017  
For further information, please call: (512) 936-3372



### 34 TAC §310.8

The State Board of Trustees (Board) of Texas Emergency Services Retirement System (System) adopt amendments to §310.8 relating to Billings without changes to the proposed text as published in the June 30, 2017, issue of the *Texas Register* (42 TexReg 3351).

The amended section is adopted to simplify the billing process and require the local board of each Participating Department (Department) to certify System roster reports so that all eligible

persons of the Departments are enrolled into the System as required by Title 8, Texas Government Code, Subtitle H, Texas Emergency Services Retirement System, §862.002.

The Board has received one public comment on the amended section from a representative of a local Board of a Department which questions the need for a meeting of the Local board to complete a System roster report. After considering this comment, the Board will adopt amendments to §310.8 as published in the June 30th, 2017, issue of the *Texas Register* (42 TexReg 3351) without any changes. The Board decided in this fashion by reasoning that members are currently enrolled during an open meeting of the local board, and that requiring an open meeting of the local board to certify a System roster report will ensure that the local board enroll all eligible persons at the Department.

The amendments are adopted under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, §§863.004, 864.0135, 865.014, and 865.016, which allow the System to collect contributions from Participating Departments for the administration of the fund.

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 August 21, 2017.

TRD-201703261  
Kevin Deiters  
Executive Director  
Texas Emergency Services Retirement System  
Effective date: September 10, 2017  
Proposal publication date: June 30, 2017  
For further information, please call: (512) 936-3372



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

#### CHAPTER 15. DRIVER LICENSE RULES SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES 37 TAC §15.49

The Texas Department of Public Safety (the department) adopts amendments to §15.49, concerning Proof of Domicile. This rule is adopted without changes to the proposed text as published in the June 30, 2017 issue of the *Texas Register* (42 TexReg 3353) and will not be republished.

These amendments clarify residency requirements for persons under the care and conservatorship of the Department of Family and Protective Services (DFPS).

No comments were received regarding the adoption of this rule.

This amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Com-



mission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 25, 2017.

TRD-201703339

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: September 14, 2017

Proposal publication date: June 30, 2017

For further information, please call: (512) 424-5848



## SUBCHAPTER J. DRIVER RESPONSIBILITY PROGRAM

### 37 TAC §15.167, §15.168

The Texas Department of Public Safety (the department) adopts new §15.167 and §15.168, concerning Driver Responsibility Program. These rules are adopted without changes to the proposed text as published in the June 30, 2017 issue of the *Texas Register* (42 TexReg 3354) and will not be republished.

These rules are necessary to inform the public of changes to the Driver Responsibility Program (DRP) and the requirements for persons eligible to obtain this surcharge reduction authorized by Texas Transportation Code, §708.103(c) and §708.104(b-1).

No comments were received regarding the adoption of these rules.

These new rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §708.103(c) and §708.104(b-1).

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 August 25, 2017.

TRD-201703340

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: September 14, 2017

Proposal publication date: June 30, 2017

For further information, please call: (512) 424-5848



## PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

### CHAPTER 151. GENERAL PROVISIONS

#### 37 TAC §151.8

The Texas Board of Criminal Justice adopts amendments to §151.8, concerning Advisory Committees, without changes to the proposed text as published in the July 21, 2017, issue of the *Texas Register* (42 TexReg 3624).

The adopted amendments are necessary to update formatting.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §§492.006, 492.013, 493.003, 510.011 - .014, and Chapter 2110; Texas Health & Safety Code §614.002, and §614.009.

Cross Reference to Statutes: None.

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 August 25, 2017.

TRD-201703345

Sharon Howell

General Counsel

Texas Department of Criminal Justice

Effective date: September 14, 2017

Proposal publication date: July 21, 2017

For further information, please call: (936) 437-6700



## CHAPTER 152. CORRECTIONAL INSTITUTIONS DIVISION

### SUBCHAPTER D. OTHER RULES

#### 37 TAC §152.51

The Texas Board of Criminal Justice adopts amendments to §152.51, concerning Authorized Witnesses to the Execution of an Offender Sentenced to Death, without changes to the proposed text as published in the July 21, 2017, issue of the *Texas Register* (42 TexReg 3624).

The adopted amendments are necessary to update formatting.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.013; Texas Code of Criminal Procedure art. 43.20.

Cross Reference to Statutes: None.

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 August 25, 2017.

TRD-201703346

Sharon Howell

General Counsel

Texas Department of Criminal Justice

Effective date: September 14, 2017

Proposal publication date: July 21, 2017

For further information, please call: (936) 437-6700



#### 37 TAC §152.61

The Texas Board of Criminal Justice adopts amendments to §152.61, concerning Emergency Response to Law Enforcement Agencies or Departments and Non-Agent Private Prisons or Jails, without changes to the proposed text as published in the July 21, 2017, issue of the *Texas Register* (42 TexReg 3626).

The adopted amendments are necessary to update formatting. No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.013, §494.008.

Cross Reference to Statutes: None.

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 August 25, 2017.

TRD-201703347

Sharon Howell

General Counsel

Texas Department of Criminal Justice

Effective date: September 14, 2017

Proposal publication date: July 21, 2017

For further information, please call: (936) 437-6700



## CHAPTER 159. SPECIAL PROGRAMS

### 37 TAC §159.1

The Texas Board of Criminal Justice adopts amendments to §159.1, concerning Substance Abuse Felony Punishment

Facilities (SAFPF) Eligibility Criteria, without changes to the proposed text as published in the July 21, 2017, issue of the *Texas Register* (42 TexReg 3627).

The adopted amendments are necessary to clarify that offenders with United States Immigration and Customs Enforcement (ICE) detainees are not eligible to participate in substance abuse felony punishment facilities and to update formatting.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.013 and §493.009 and Texas Code of Criminal Procedure art. 42A.303.

Cross Reference to Statutes: None.

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 August 25, 2017.

TRD-201703348

Sharon Howell

General Counsel

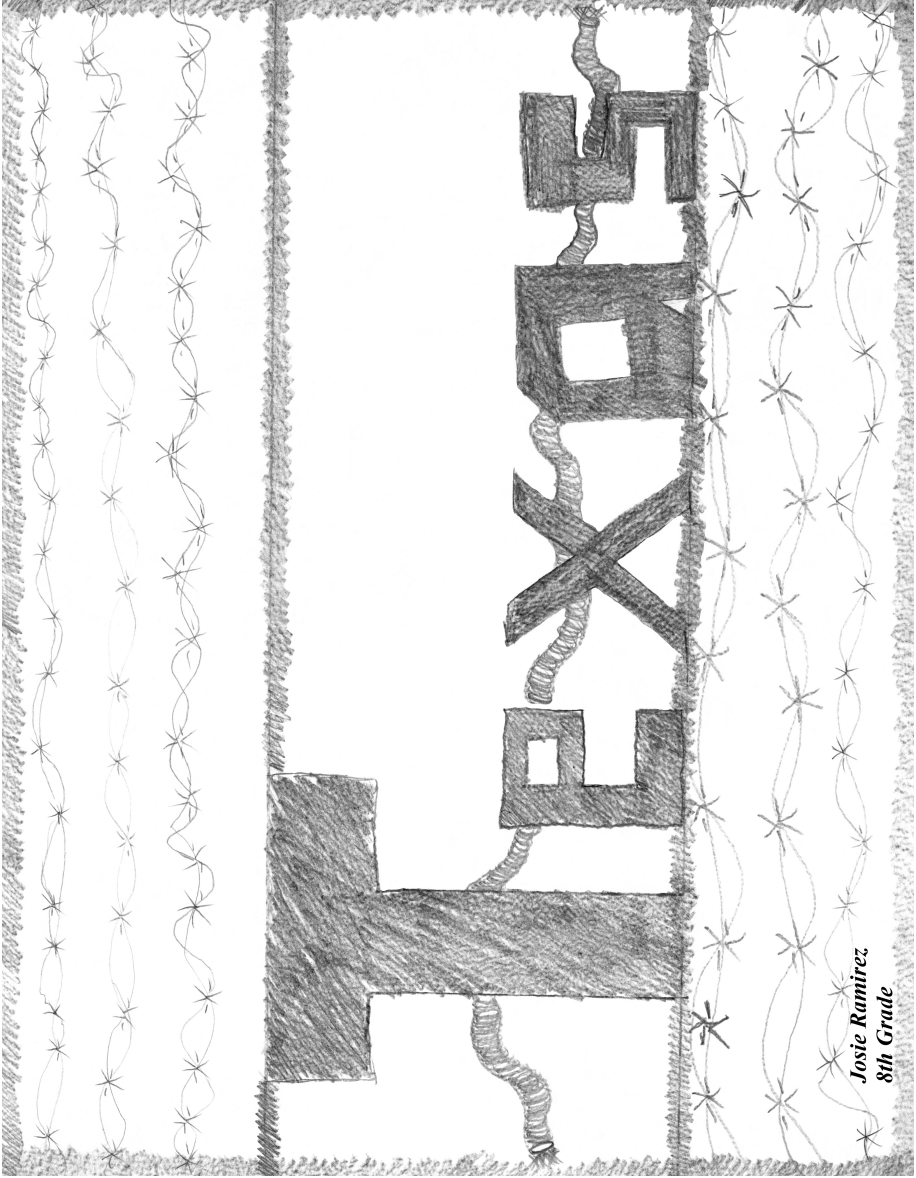
Texas Department of Criminal Justice

Effective date: September 14, 2017

Proposal publication date: July 21, 2017

For further information, please call: (936) 437-6700





*Josie Ramirez*  
*8th Grade*

# 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 Animal Health Commission

### Title 4, Part 2

The Texas Animal Health Commission (commission) proposes the review of Texas Administrative Code, Title 4, Part 2, Chapter 31, concerning Anthrax, in accordance with Texas Government Code, §2001.039. The rules to be reviewed are §§31.1, 31.2, and 31.3.

As required by §2001.039 of the Texas Government Code, the commission will accept comments and make a final assessment regarding whether the reasons for initially adopting these rules continues to exist and whether these rules should be revised, readopted or repealed.

Comments on the rule review may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719, or by email at "comments@tahc.texas.gov" no later than 30 days from the date that the proposed review is published in the *Texas Register*.

TRD-201703310  
Gene Snelson  
General Counsel  
Texas Animal Health Commission  
Filed: August 24, 2017



The Texas Animal Health Commission (commission) proposes the review of Texas Administrative Code, Title 4, Part 2, Chapter 34, concerning Veterinary Biologics, in accordance with Texas Government Code, §2001.039. The rules to be reviewed are §34.1 and §34.2.

As required by §2001.039 of the Texas Government Code, the commission will accept comments and make a final assessment regarding whether the reasons for initially adopting these rules continues to exist and whether these rules should be revised, readopted or repealed.

Comments on the rule review may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719, or by email at "comments@tahc.texas.gov" no later than 30 days from the date that the proposed review is published in the *Texas Register*.

TRD-201703374  
Gene Snelson  
General Counsel  
Texas Animal Health Commission  
Filed: August 28, 2017



The Texas Animal Health Commission (commission) proposes the review of Texas Administrative Code, Title 4, Part 2, Chapter 35, Subchapters A, B, C, and D, concerning Brucellosis, in accordance with Texas Government Code, §2001.039. The rules to be reviewed are §§35.1 - 35.7, 35.41 - 35.48, 35.60 - 35.62, and 35.80 - 35.82.

As required by §2001.039 of the Texas Government Code, the commission will accept comments and make a final assessment regarding whether the reasons for initially adopting these rules continues to exist and whether these rules should be revised, readopted or repealed.

Comments on the rule review may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719, or by email at "comments@tahc.texas.gov" no later than 30 days from the date that the proposed review is published in the *Texas Register*.

TRD-201703376  
Gene Snelson  
General Counsel  
Texas Animal Health Commission  
Filed: August 28, 2017



The Texas Animal Health Commission (commission) proposes the review of Texas Administrative Code, Title 4, Part 2, Chapter 37, concerning Screwworms, in accordance with Texas Government Code, §2001.039. The rules to be reviewed are §37.1 and §37.2.

As required by §2001.039 of the Texas Government Code, the commission will accept comments and make a final assessment regarding whether the reasons for initially adopting these rules continues to exist and whether these rules should be revised, readopted or repealed.

Comments on the rule review may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719, or by email at "comments@tahc.texas.gov" no later than 30 days from the date that the proposed review is published in the *Texas Register*.

TRD-201703377  
Gene Snelson  
General Counsel  
Texas Animal Health Commission  
Filed: August 28, 2017



The Texas Animal Health Commission (commission) proposes the review of Texas Administrative Code, Title 4, Part 2, Chapter 39, con-

cerning Scabies and Mange Mites, in accordance with Texas Government Code, §2001.039. The rules to be reviewed are §§39.1 - 39.7.

As required by §2001.039 of the Texas Government Code, the commission will accept comments and make a final assessment regarding whether the reasons for initially adopting these rules continues to exist and whether these rules should be revised, readopted or repealed.

Comments on the rule review may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719, or by email at "comments@tahc.texas.gov" no later than 30 days from the date that the proposed review is published in the *Texas Register*.

TRD-201703379  
Gene Snelson  
General Counsel  
Texas Animal Health Commission  
Filed: August 28, 2017



The Texas Animal Health Commission (commission) proposes the review of Texas Administrative Code, Title 4, Part 2, Chapter 49, concerning Equine, in accordance with Texas Government Code, §2001.039. The rules to be reviewed are §§49.1 - 49.6.

As required by §2001.039 of the Texas Government Code, the commission will accept comments and make a final assessment regarding whether the reasons for initially adopting these rules continues to exist and whether these rules should be revised, readopted or repealed.

Comments on the rule review may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719, or by email at "comments@tahc.texas.gov" no later than 30 days from the date that the proposed review is published in the *Texas Register*.

TRD-201703380  
Gene Snelson  
General Counsel  
Texas Animal Health Commission  
Filed: August 28, 2017



The Texas Animal Health Commission (commission) proposes the review of Texas Administrative Code, Title 4, Part 2, Chapter 58, Subchapters A - D, concerning Emergency Response and Management, in accordance with Texas Government Code, §2001.039. The rules to be reviewed are §§58.1 - 58.3, 58.11, 58.12, 58.21, 58.22, 58.31, and 58.32.

As required by §2001.039 of the Texas Government Code, the commission will accept comments and make a final assessment regarding whether the reasons for initially adopting these rules continues to exist and whether these rules should be revised, readopted or repealed.

Comments on the rule review may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719, or by email at "comments@tahc.texas.gov" no later than 30 days from the date that the proposed review is published in the *Texas Register*.

TRD-201703381  
Gene Snelson  
General Counsel  
Texas Animal Health Commission  
Filed: August 28, 2017



Comptroller of Public Accounts

**Title 34, Part 1**

The Comptroller of Public Accounts proposes to review Texas Administrative Code, Title 34, Part 1, Chapter 7, Prepaid Higher Education Tuition Program; Chapter 9, Property Tax Administration; Chapter 12, Economic Growth; Chapter 13, Unclaimed Property Reporting and Compliance; and Chapter 15, Electronic Transfer of Certain Payments to State Agencies. This review is being conducted in accordance with Government Code, §2001.039. The review will include, at the minimum, whether the reasons for readopting continue to exist.

The comptroller will accept comments regarding the review. The comment period will last for 30 days following the publication of this notice in the *Texas Register*.

Comments pertaining to this review may be directed accordingly:

**Chapter 7, Prepaid Higher Education Tuition Program**

Linda Fernandez, Program Director  
Educational Opportunities and Investment Division  
P.O. Box 13528, Austin, Texas 78711-3528

**Chapter 9, Property Tax Administration**

Mike Esparza, Director  
Property Tax Assistance Division  
P.O. Box 13528, Austin, Texas 78711-3528.

**Chapter 12, Economic Growth**

Cary Dupuy, Policy Advisor  
Natural Resources Policy Division  
P.O. Box 13528, Austin, Texas 78711-3528

**Chapter 13, Unclaimed Property Reporting and Compliance**

Joani Bishop  
Unclaimed Property  
P.O. Box 13528, Austin, Texas 75711-3528

**Chapter 15, Electronic Transfer of Certain Payments to State Agencies**

Tom Smelker, Director  
Treasury Operations  
P.O. Box 13528, Austin, Texas 75711-3528

TRD-201703408  
Lita Gonzalez  
General Counsel  
Comptroller of Public Accounts  
Filed: August 30, 2017



# TABLES &

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# 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.

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Figure: 37 TAC §36.60(b)

Violation Address	1st Action	2nd Action within 2 yrs	3rd Action within 2 yrs	4th Action within 2 yrs	5th Action within 2 yrs
Address on File. (37 TAC §36.3)	Advisory	Reprimand or Admin Penalty up to \$250	Reprimand or Admin Penalty up to \$500	Suspension 30 days	Suspension 60 days or Revocation
<b>Forms</b>					
Forms. (37 TAC §36.4)	Advisory	Reprimand or Admin Penalty up to \$250	Reprimand or Admin Penalty up to \$500	Suspension 30 days	Suspension 60 days or Revocation
<b>Ownership</b>					
Change in Ownership. (37 TAC §36.13)	Advisory	Reprimand or Admin Penalty up to \$250	Reprimand or Admin Penalty up to \$500	Suspension 30 days	Suspension 60 days or Revocation
<b>Locations</b>					
Adding or Changing Locations. (37 TAC §36.18)	Advisory	Reprimand or Admin Penalty up to \$250	Reprimand or Admin Penalty up to \$500	Suspension 30 days or Suspension 60 days or Revocation	Suspension 60 days or Revocation
Notice to Sellers. (Occupations Code, §1956.031)	Reprimand or Admin Penalty up to \$250	Reprimand or Admin Penalty up to \$500	Suspension 30 days	Revocation	Revocation
<b>Records</b>					
Information Regarding Seller. (Occupations Code, §1956.032)	Advisory	Reprimand or Admin Penalty up to \$500	Reprimand or Admin Penalty up to \$1000	Suspension 30 days	Suspension 60 days or Revocation
Record of Purchase. (Occupations Code, §1956.033)	Reprimand or Admin Penalty up to \$500	Reprimand or Admin Penalty up to \$1000	Suspension 30 days	Suspension 60 days or Revocation	Revocation
Documentation of Fire-Salvaged Insulated Communications Wire. (37 TAC §36.33)	Advisory	Reprimand or Admin Penalty up to \$500	Reprimand or Admin Penalty up to \$1000	Suspension 30 days	Suspension 60 days or Revocation
Photograph or Recording Requirement for Regulated Metal Transaction. (Occupations Code, §1956.0331)	Advisory	Reprimand or Admin Penalty up to \$500	Reprimand or Admin Penalty up to \$1000	Suspension 30 days	Suspension 60 days or Revocation
Preservation of Records. (Occupations Code, §1956.034)	Reprimand or Admin Penalty up to \$500	Reprimand or Admin Penalty up to \$1000	Suspension 30 days	Suspension 60 days	Revocation
Inspection of Records. (Occupations Code, §1956.035)	Reprimand or Admin Penalty up to \$500	Reprimand or Admin Penalty up to \$1000	Suspension 30 days	Suspension 60 days	Revocation
Reporting Requirements. (37 TAC §36.31)	Reprimand or Admin Penalty up to \$500	Reprimand or Admin Penalty up to \$1000	Suspension 30 days	Suspension 60 days	Revocation
Furnishing of Report to Department. (Occupations Code, §1956.036)	Reprimand or Admin Penalty up to \$500	Reprimand or Admin Penalty up to \$1000	Suspension 30 days	Suspension 60 days	Revocation
Placement of Items on Hold. (Occupations Code, §1956.037)	Reprimand or Admin Penalty up to \$500	Reprimand or Admin Penalty up to \$1000	Suspension 30 days	Suspension 60 days	Revocation
<b>Conduct</b>					
Standards of Conduct. (37 TAC §36.36 (a), (b), or (d))	Advisory	Reprimand or Admin Penalty up to \$250	Reprimand or Admin Penalty up to \$500	Suspension 30 days	Suspension 60 days
Explosives. (37 TAC §36.36 (c))	Reprimand or Admin Penalty up to \$500	Reprimand or Admin Penalty up to \$1000	Suspension 30 days	Suspension 60 days	Revocation
Hours for Purchasing Material. (Occupations Code, §1956.039)	Advisory	Reprimand or Admin Penalty up to \$250	Reprimand or Admin Penalty up to \$500	Suspension 30 days	Suspension 60 days or Revocation
Notice of Restrictions. (Lead-acid battery, fuel tank, PCB-containing capacitor) (Occupations Code, §1956.104)	Advisory	Reprimand or Admin Penalty up to \$250	Reprimand or Admin Penalty up to \$500	Suspension 30 days	Suspension 60 days or Revocation
<b>Training</b>					
Texas Metals Program Recycler Training. (37 TAC §36.34)	Advisory	Reprimand or Admin Penalty up to \$250	Reprimand or Admin Penalty up to \$500	Suspension 30 days	Suspension 60 days or Revocation
<b>Payment</b>					
Payment by Metal Recycling Entity. (37 TAC §36.35)	Advisory	Reprimand or Admin Penalty up to \$500	Reprimand or Admin Penalty up to \$1000	Suspension 30 days or Suspension 60 days or Revocation	Suspension 60 days or Revocation
Cash Transaction Card. (Occupations Code, §1956.0382)	Reprimand or Admin Penalty up to \$500	Reprimand or Admin Penalty up to \$1000	Suspension 30 days	Revocation	Revocation
Cash Transaction Card. (37 TAC §36.37)	Advisory	Reprimand or Admin Penalty up to \$500	Reprimand or Admin Penalty up to \$1000	Suspension 30 days	Suspension 60 days or Revocation
<b>Revocation of a Certificate of Registration</b>					
Revocation of a Certificate of Registration. (37 TAC §36.53)	Revocation				
<b>Solicitation</b>					
Criminal Penalty for Certain Solicitation. (Occupations Code, §1956.203)	Reprimand or Admin Penalty up to \$250	Reprimand or Admin Penalty up to \$500	Suspension 30 days	Suspension 60 days	Revocation
<b>Failure to Pay Fine</b>					
Advisory Letters, Reprimands and Suspensions of a Certificate of Registration. (37 TAC §36.52)	Suspension until penalty is paid in full				

# 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.

## Department of Aging and Disability Services

### Correction of Error

The Texas Health and Human Services Commission, on behalf of the Department of Aging and Disability Services, published the adoption of an amendment to 40 TAC §19.101 in the September 1, 2017 issue of the *Texas Register* (42 TexReg 4468). The text of paragraph (31) was submitted incorrectly by the agency.

The text of paragraph (31) was submitted as follows:

(31) The Department of Aging and Disability Services or the Health and Human Services Commission, as its successor agency.

The term "Department" is being defined in this paragraph, so paragraph (31) should read as follows:

(31) Department--The Department of Aging and Disability Services or the Health and Human Services Commission, as its successor agency.

TRD-201703395

Karen Ray

Chief Counsel

Department of Aging and Disability Services

Filed: August 29, 2017

## Office of the Attorney General

### Request for Applications for the Second Offering Sexual Assault Prevention and Crisis Services-State Program

The Office of the Attorney General (OAG) is soliciting applications from local and statewide programs to utilize funds for preventing sexual assault or improving services for survivors and other individuals affected by sexual violence.

**Applicable Funding Source:** The source of funding is through a biennial appropriation by the Texas Legislature. All funding is contingent upon an appropriation to the OAG by the Texas Legislature. The OAG makes no commitment that an application, once submitted, or a grant, once funded, will receive subsequent funding.

**Eligibility Requirements:** To be eligible for this grant opportunity, the Applicant must have been a Fiscal Year (FY) 2017 Sexual Assault Prevention and Crisis Services (SAPCS)-State grantee on August 31, 2017 and not offered or awarded an FY 2018-2019 SAPCS-State grant contract during the first issuance of this funding opportunity.

**Eligible Applicants:** Sexual Assault Programs, Statewide Programs, and State Sexual Assault Coalitions are eligible to apply for a SAPCS-State grant.

Non-profit Applicants with 26 U.S.C. §501(c)(3) status must be in good standing with the Comptroller of Public Accounts and "in existence" with the Secretary of State.

**Eligibility:** The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible applicant; the application is not filed in the manner and form required by the Application Kit; the application is filed after

the deadline established in the Application Kit; or the application does not meet other requirements as stated in the Request for Applications (RFA) and the Application Kit.

**How to Obtain Application Kit:** The OAG will post the Application Kit on the OAG's website at <https://www.texasattorneygeneral.gov/cvs/grants-and-contracts>. Updates and other helpful reminders about the application process will also be posted at this location. Potential applicants are encouraged to refer to the site regularly.

### Deadlines and Filing Instructions for the Grant Application:

**Registration Deadline:** Online registration is required to apply for a grant. The deadline to register will be stated in the Application Kit. If registration is not completed by the deadline, then an Application will not be accepted and is not eligible for funding. To register go to: <https://www.texasattorneygeneral.gov/cvs/grants-and-contracts>.

**Application Deadline:** The Applicant Organization must submit its application, including all required attachments, to the OAG and the OAG must receive the submitted application and all required attachments by the deadline established in the Application Kit to be considered timely filed.

**Filing Instructions:** Strict compliance with the filing instructions, as provided in the Application Kit, is required. The OAG will **not** consider an Application if it is not received by the due date as stated in the Application Kit.

**Minimum and Maximum Amounts of Funding Available:** The minimum amount of funding for all programs is \$85,000 per fiscal year. The maximum amounts of funding are as follows: sexual assault program, statewide programs, and sexual assault coalitions \$85,000 per fiscal year; currently funded sexual assault programs \$210,000 per fiscal year; and currently funded statewide programs and state sexual assault coalitions \$300,000 per fiscal year.

Regardless of the maximum amounts stated above, a current SAPCS-State grantee may not apply, per fiscal year, for an amount higher than the SAPCS-State funds it received in FY 2017. The award amount is determined solely by the OAG. The OAG may award grants at amounts above or below the established funding levels and is not obligated to fund a grant at the amount requested.

A currently funded program is one that has an active grant contract on August 31, 2017. Previous grantees that were not funded in FY 2017, or that de-obligated their contracts in FY 2017, will be considered new applicants for this Application Kit.

**Start Date and Length of Grant Contract Period:** The grant contract period (term) is up to two years from September 1, 2017 through August 31, 2019, subject to and contingent on funding and/or approval by the OAG.

**No Match Requirements:** There are no match requirements.

**Volunteer Requirements:** All SAPCS-State projects must have a volunteer component. Specific requirements for the volunteer component will be stated in the Application Kit.



**Award Criteria:** The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring and review components may include, but are not limited to, information provided by the applicant on the proposed project activities and budget. Funding decisions may include a competitive allocation method. All grant decisions including, but not limited to, eligibility, evaluation and review, and funding rest completely within the discretionary authority of the OAG. The decisions made by the OAG are final and are not subject to appeal.

**Grant Purpose Area:** Grant contracts awarded under this Application Kit are to maintain or expand the existing services of sexual assault programs and any other purposes consistent with Texas Government Code, Chapter 420.

**Prohibitions on Use of Grant Funds:** OAG grant funds may not be used to support or pay the costs of overtime, dues, or lobbying; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG grant-funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

**OAG Contact Person:** If additional information is needed, contact Lyndsay Ysla at [Grants@oag.texas.gov](mailto:Grants@oag.texas.gov) or (512) 936-1278.

TRD-201703388  
Amanda Crawford  
General Counsel  
Office of the Attorney General  
Filed: August 28, 2017

◆ ◆ ◆  
**Comptroller of Public Accounts**

Notice of Request for Proposals

Pursuant to Chapters 403 and 2115 and Sections 2155.001 and 2156.121, of the Texas Government Code, the Texas Comptroller of Public Accounts ("Comptroller") announces its Request for Proposals No. 219m ("RFP") from qualified individuals or independent firms to provide overpayment recovery audit services to participating Texas state agencies and institutions of higher education ("Participating State Agencies") as assigned by Comptroller. One or more successful respondents will assist Comptroller in conducting overpayment recovery audits of Participating State Agencies and providing other related services, as directed by Comptroller. Comptroller reserves the right to award one or more contracts under this RFP. The successful respondent(s), if any, will be expected to begin performance of the contract(s), if any, awarded under this RFP on or about November 1, 2017, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact Cindy Stapper, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, in the Issuing Office at: 111 E. 17th St., Room 201, Austin, Texas 78774, (512) 305-8673. The RFP will be available electronically on the *Electronic State Business Daily* ("ESBD") at: <http://esbd.cpa.state.tx.us> after 10:00 a.m. Central Time ("CT") on Friday, September 8, 2017. The times stated in this notice refer to Central Time, Austin, Texas.

Questions: All questions regarding the RFP must be received in the Issuing Office no later than 2:00 p.m. CT on Friday, September 15, 2017. *Questions received after the deadline will not be considered.* Prospective respondents are encouraged to fax or e-mail questions to (512) 463-3669 or [contracts@cpa.texas.gov](mailto:contracts@cpa.texas.gov) to ensure timely receipt. On or about Friday, September 22, 2017, Comptroller expects to post responses to questions as an addendum to the ESBD notice on the issuance of the RFP.

Closing Date: Proposals must be delivered in the Issuing Office to the attention of the Assistant General Counsel no later than 2:00 p.m. CT, on Friday, October 13, 2017. *Proposals received after this date and time will not be considered. Respondents shall be solely responsible for ensuring timely receipt of their proposals in the Issuing Office.*

Evaluation criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or to the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - September 8, 2017, after 10:00 a.m. CT; Questions Due - September 15, 2017, 2:00 p.m. CT; Official Responses to Questions posted - September 22, 2017; Proposals Due - October 13, 2017, 2:00 p.m. CT; Contract Execution - October 31, 2017, or as soon thereafter as practical; Commencement of Work - November 1, 2017. Comptroller reserves the right, in its sole discretion, to change the dates listed for the anticipated schedule of events. Any amendment to this solicitation will be posted on the ESBD as an RFP Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a proposal.

TRD-201703418  
Cindy Stapper  
Assistant General Counsel, Contracts  
Comptroller of Public Accounts  
Filed: August 30, 2017

◆ ◆ ◆  
**Office of Consumer Credit Commissioner**

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, 303.008, 303.009, 304.003, and 346.101, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/04/17 - 09/10/17 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/04/17 - 09/10/17 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005<sup>3</sup> for the period of 08/01/17- 08/31/17 is 18% or Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 08/01/17 - 08/31/17 is 18% for Commercial over \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 10/01/17 - 12/31/17 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 10/01/17 - 12/31/17 is 18% for Commercial over \$250,000.

The retail credit card quarterly rate as prescribed by §303.009<sup>1</sup> for the period of 10/01/17 - 12/31/17 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The lender credit card quarterly rate as prescribed by §346.101<sup>1</sup> for the period of 10/01/17 - 12/31/17 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009<sup>4</sup> for the period of 10/01/17 - 12/31/17 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 10/01/17 - 12/31/17 is 18% for Commercial over \$250,000.

The retail credit card annual rate as prescribed by §303.009<sup>1</sup> for the period of 10/01/17 - 12/31/17 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 09/01/17 - 09/30/17 is 5.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed §304.003 for the period of 09/01/17 - 09/30/17 is 5.00% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

<sup>3</sup> For variable rate commercial transactions only.

<sup>4</sup> Only for open-end credit as defined in §301.002(14), Texas Finance Code.

TRD-201703391

Leslie Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: August 29, 2017

## Texas Council for Developmental Disabilities

### Request for Proposals

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds to provide leadership development and advocacy skills training using TCDD approved curriculum in designated rural areas of the state. For this project, the applicants are limited to those groups and organizations located in designated rural areas of the State.

TCDD may award a maximum of \$85,000 per year, per project, for up to three project(s), for up to five years. TCDD reserves the right to negotiate the budget as needed and may choose not to award funding for these projects. Up to \$25,000 in additional funding may be made available to provide reasonable accommodations to Project Directors or Project Coordinators who have a developmental disability if accommodations are necessary and exceed the amount the organization can afford.

Funds available for these projects are provided to TCDD by the U.S. Department of Health and Human Services, Administration on Intellectual and Developmental Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the project is dependent on the results of a review process established by TCDD

and on the availability of funds. Non-federal matching funds of at least 10% of the total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

Additional information concerning this RFP may be obtained at [www.DDSuite.org](http://www.DDSuite.org). More information about TCDD may be obtained through TCDD's website at [www.tcdd.texas.gov/](http://www.tcdd.texas.gov/). All questions pertaining to this RFP should be directed in writing to Danny Fikac, Planning Specialist, via email at [Danny.Fikac@tcdd.texas.gov](mailto:Danny.Fikac@tcdd.texas.gov). Mr. Fikac may also be reached by telephone at (512) 437-5415.

Deadline: Proposals must be submitted through [www.DDSuite.org](http://www.DDSuite.org) by 11/15/2017. Proposals will not be accepted after the due date.

TRD-201703397

Beth Stalvey

Executive Director

Texas Council for Developmental Disabilities

Filed: August 29, 2017

### Request for Proposals

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds to develop and pilot peer supports and training programs for individuals with developmental disabilities who live in institutions -- state supported living centers (SSLCs), nursing homes, or intermediate care facilities (ICF-DD) settings -- so they understand their rights, learn about opportunities available in communities, and can lead or actively participate in their own person centered planning process.

TCDD may award a maximum of \$125,000 per year, per project, for up to three project(s), for up to five years. TCDD reserves the right to negotiate the budget as needed and may choose not to award funding for these projects.

Funds available for these projects are provided to TCDD by the U.S. Department of Health and Human Services, Administration on Intellectual and Developmental Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the project is dependent on the results of a review process established by TCDD and on the availability of funds. Non-federal matching funds of at least 10% of the total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

Additional information concerning this RFP may be obtained at [www.DDSuite.org](http://www.DDSuite.org). More information about TCDD may be obtained through TCDD's website at [www.tcdd.texas.gov/](http://www.tcdd.texas.gov/). All questions pertaining to this RFP should be directed in writing to Danny Fikac, Planning Specialist, via email at [Danny.Fikac@tcdd.texas.gov](mailto:Danny.Fikac@tcdd.texas.gov). Mr. Fikac may also be reached by telephone at (512) 437-5415.

Deadline: Proposals must be submitted through [www.DDSuite.org](http://www.DDSuite.org) by 11/15/2017. Proposals will not be accepted after the due date.

TRD-201703398

Beth Stalvey

Executive Director

Texas Council for Developmental Disabilities

Filed: August 29, 2017

## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is October 9, 2017. 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 9, 2017. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Aqua Utilities, Incorporated; DOCKET NUMBER: 2017-0520-MWD-E; IDENTIFIER: RN101518926; LOCATIONS: Denton, Denton County; Sunrise Beach, Burnet County; Wimberley, Hays County; and Alvin, Brazoria Counties; TYPE OF FACILITIES: wastewater treatment facilities; RULES VIOLATED: TWC, §26.121(d), by failing to obtain authorization for the discharge of wastewater into or adjacent to any water in the state; TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011332001, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; TWC, §26.121(a)(1) and TPDES Permit Number WQ0013989001, Permit Conditions Number 2.g., by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; 30 TAC §305.125(5) and §317.3(e)(5), and TPDES Permit Number WQ0013989001, Operational Requirements Number 1, by failing to properly operate and maintain the facility; and TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ001282201, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; PENALTY: \$34,500; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Asim Shahzad dba Bear Creek Grocery; DOCKET NUMBER: 2017-0852-PST-E; IDENTIFIER: RN104499496; LOCATION: Cleveland, Liberty 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; PENALTY: \$3,375; ENFORCEMENT COORDINA-

TOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: BARRERA INVESTMENTS, INCORPORATED; DOCKET NUMBER: 2017-0699-PST-E; IDENTIFIER: RN100531052; LOCATION: Refugio, Refugio County; TYPE OF FACILITY: out-of-service underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.7(d)(1)(A) and (3), by failing to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition; PENALTY: \$1,188; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(4) COMPANY: CHEVRON U.S.A. INCORPORATED; DOCKET NUMBER: 2017-0873-IWD-E; IDENTIFIER: RN100706811; LOCATION: Galena Park, Harris County; TYPE OF FACILITY: petroleum bulk fuel station and terminal; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0001745000, Effluent Limitations and Monitoring Requirements Number 1, Outfall 002, by failing to comply with permitted effluent limitations; PENALTY: \$4,725; ENFORCEMENT COORDINATOR: Ariel Ramirez, (512) 239-4935; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: City of Livingston; DOCKET NUMBER: 2017-0613-PWS-E; IDENTIFIER: RN101232874; LOCATION: Livingston, Polk County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(j), by failing to utilize a customer service inspection (CSI) certificate form approved by the executive director (ED) or receive approval from the ED for any CSI certificate form which varies from the specified format; 30 TAC §290.44(h)(4)(C), by failing to ensure that any backflow prevention assembly Test and Maintenance report form which varies from the format specified in Commission Form 20700 is approved by the ED prior to being placed in use; 30 TAC §290.46(m), by failing to initiate maintenance and house-keeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(u), by failing to plug an abandoned public water supply well in accordance with 16 TAC Chapter 76, or submit the test results proving that the well is in a non-deteriorated condition; 30 TAC §290.46(p)(2), by failing to provide the ED with a list of all the operators and operating companies that the public water system uses on an annual basis; 30 TAC §290.44(h)(4), by failing to have the backflow prevention assemblies tested upon installation and certified on an annual basis by a recognized backflow prevention assembly tester; and 30 TAC §290.45(b)(1)(D)(iv) and Texas Health and Safety Code, §341.0315(c), by failing to provide an elevated storage tank capacity of 100 gallons per connection; PENALTY: \$7,380; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: City of Richland Springs; DOCKET NUMBER: 2017-0871-PWS-E; IDENTIFIER: RN101405033; LOCATION: Richland Springs, San Saba County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year, and failing to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data for calendar year 2015; 30 TAC §290.117(g)(2)(A), by failing to submit a recommendation to the executive director (ED)

for source water treatment within 180 days after the January 1, 2016 - December 31, 2016, monitoring period during which the lead action level was exceeded; and 30 TAC §290.117(f)(3)(A), by failing to submit a recommendation to the ED for optimal corrosion control treatment within six months after the January 1, 2016 - December 31, 2016, monitoring period during which the lead action level was exceeded; PENALTY: \$150; ENFORCEMENT COORDINATOR: Paige Bond, (512) 239-2678; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: City of Texline; DOCKET NUMBER: 2017-0870-PWS-E; IDENTIFIER: RN101454361; LOCATION: Texline, Dallam County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.108(f)(1) and §290.122(b)(2)(A) and (f), and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with maximum contaminant level (MCL) of 5 pCi/L for combined radium-226 and radium-228 for the fourth quarter of 2016 and the first quarter of 2017, based on a running annual average, and failing to provide public notification and submit a copy of the public notification to the executive director (ED) regarding the failure to comply with the MCL for combined radium-226 and radium-228 for the fourth quarter of 2016; and 30 TAC §290.108(f)(1) and §290.122(b)(2)(A) and (f), and THSC, §341.0315(c), by failing to comply with the MCL of 15 pCi/L for gross alpha particle activity for the fourth quarter of 2016 and the first quarter of 2017, based on the running annual average, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to comply with the MCL for gross alpha particle activity for the fourth quarter of 2016; PENALTY: \$427; ENFORCEMENT COORDINATOR: Paige Bond, (512) 239-2678; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(8) COMPANY: HOUSTON COUNTRY CLUB; DOCKET NUMBER: 2017-0751-PST-E; IDENTIFIER: RN102013802; LOCATION: Houston, Harris County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; and 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; PENALTY: \$11,700; ENFORCEMENT COORDINATOR: John Paul Fennell, (512) 239-2616; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: HS BUSINESS INCORPORATED dba HS Chevron; DOCKET NUMBER: 2017-0637-PST-E; IDENTIFIER: RN101907947; LOCATION: Humble, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(c) and §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month, and failing to conduct effective inventory control procedures for the UST system involved in the retail sale of flammable liquids used as a motor fuel; 30 TAC §334.74, by failing to investigate a suspected release of regulated substance within 30 days of discovery; and 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; PENALTY: \$33,107; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Lakeline Sports Investments, LLC; DOCKET NUMBER: 2017-0704-EAQ-E; IDENTIFIER: RN106356025; LO-

CATION: Cedar Park, Williamson County; TYPE OF FACILITY: commercial recreational sport site; RULES VIOLATED: 30 TAC §213.4(a)(1) and (j)(3) and Water Pollution Abatement Plan (WPAP) Number 11-12022203, Standard Conditions Number 5, by failing to obtain approval of a modification to an approved WPAP prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; 30 TAC §213.5(f)(1) and WPAP Number 11-12022203, Standard Conditions Number 6, by failing to provide written notification of intent to commence construction to the Austin Regional Office no later than 48 hours prior to commencement of a regulated activity; 30 TAC §213.5(b)(4)(D)(ii)(II) and WPAP Number 11-12022203, Standard Conditions Number 16, by failing to insure that the permanent best management practices and measures are constructed and function as designed; and 30 TAC §213.4(k) and WPAP Number 11-12022203, Standard Conditions Number 18, by failing to comply with an approved WPAP; PENALTY: \$4,150; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(11) COMPANY: Lockhart Market LLC; DOCKET NUMBER: 2017-0779-PST-E; IDENTIFIER: RN102346202; LOCATION: Lockhart, Caldwell 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; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(12) COMPANY: Orion Engineered Carbons LLC; DOCKET NUMBER: 2017-0148-AIR-E; IDENTIFIER: RN100209386; LOCATION: Orange, Orange County; TYPE OF FACILITY: carbon black manufacturing plant; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent nuisance conditions; PENALTY: \$36,300; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(13) COMPANY: The George Foundation; DOCKET NUMBER: 2016-0475-PWS-E; IDENTIFIER: RN101235570; LOCATION: Richmond, Fort Bend County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(A), (h) and (i)(1) and §290.122(c)(2)(A) and (f), and 40 Code of Federal Regulations (CFR) §141.86 and §141.90(a), by failing to collect lead and copper tap samples at the required ten sample sites for the first six-month monitoring period following the January 1, 2012 - December 31, 2014, monitoring period during which the lead action level was exceeded, have the samples analyzed, and report the results to the executive director (ED), and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples for the January 1, 2015 - June 30, 2015, monitoring period; 30 TAC §290.117(e)(2), (h) and (i)(3) and §290.122(c)(2)(A) and (f), and 40 CFR §141.87 and §141.90(a), by failing to conduct water quality parameter sampling at each of the facility's entry points and the required distribution sample sites for two consecutive six-month periods following the January 1, 2012 - December 31, 2014, monitoring period during which the lead action level was exceeded, have the samples analyzed, and report the results to the ED, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to conduct all of the required water quality parameter sampling during the January 1, 2015 - June 30, 2015, monitoring period; 30 TAC §290.117(d)(2)(A), (h) and (i)(2) and §290.122(c)(2)(A) and (f), and 40 CFR §141.88 and §141.90(b), by failing to collect one lead and copper sample from each of the facility's entry points no later than

180 days after the end of the January 1, 2012 - December 31, 2014, monitoring period during which the lead action level was exceeded, have the samples analyzed, and report the results to the ED, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect one lead and copper sample from each of the facility's entry points no later than 180 days after the end of the January 1, 2012 - December 31, 2014, monitoring period; 30 TAC §290.117(g)(2)(A) and §290.122(b)(2)(B) and (f), and 40 CFR §141.83 and §141.90(d)(1), by failing to submit a recommendation to the ED for source water treatment within 180 days after the end of the January 1, 2012 - December 31, 2014, monitoring period during which the lead action level was exceeded, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a recommendation to the ED for source water treatment; and 30 TAC §290.117(f)(3)(A) and §290.122(b)(2)(B) and (f), and 40 CFR §§141.81(e)(1), 141.82(a), and 141.90(c)(2), by failing to submit a recommendation to the ED for optimal corrosion control treatment within six months after the end of the January 1, 2012 - December 31, 2014, monitoring period during which the lead action level was exceeded, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a recommendation to the ED for optimal corrosion control treatment; PENALTY: \$735; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Total Petrochemicals and Refining USA, Incorporated; DOCKET NUMBER: 2017-0762-AIR-E; IDENTIFIER: RN102457520; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review Permt Numbers 46396, PSDTX1073M2, and N044, Special Conditions Number 1, Federal Operating Permit (FOP) Number O1267, Special Terms and Conditions (STC) Number 29, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(a) and §122.143(4), FOP Number O1267, STC Number 2.F, and THSC, §382.085(b), by failing to submit the initial notification for Incident Number 250562 within 24 hours after discovery of the emissions event; PENALTY: \$7,001; Supplemental Environmental Project offset amount of \$3,500; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(15) COMPANY: TXI Operations, LP; DOCKET NUMBER: 2017-0608-WQ-E; IDENTIFIER: RN102740073; LOCATION: Frisco, Denton County; TYPE OF FACILITY: ready-mixed concrete manufacturing facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXG110167, Part III. Permit Requirements, Section A, Number 1., by failing to comply with permitted effluent limitations at Outfall Numbers 001 and 002; and 30 TAC §305.125(1) and §319.5(b) and TPDES General Permit Number TXG110167, Part III. Permit Requirements, Section A, Number 1., by failing to collect and analyze effluent samples at the required frequency specified in the permit; PENALTY: \$12,850; ENFORCEMENT COORDINATOR: James Boyle, (512) 239-2527; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: United States Department of the Navy; DOCKET NUMBER: 2017-0467-IHW-E; IDENTIFIER: RN101131332; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: naval air station; RULES VIOLATED: 30 TAC §335.69(b) and 40 Code of Federal Regulations §262.34(b), by failing to comply with the 90-day accumulation time limitation for storage of hazardous waste;

and 30 TAC §335.6(c), by failing to update the facility's Notice of Registration; PENALTY: \$0; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(17) COMPANY: VK and HIANA LLC dba Sunrise Market 3; DOCKET NUMBER: 2017-0674-PST-E; IDENTIFIER: RN103029104; LOCATION: Aransas Pass, San Patricio 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 tank (UST) for releases at a frequency of at least once every month; and 30 TAC §334.49(b)(2) and TWC, §26.3475(d), by failing to protect from corrosion all components of an UST system which are designed to convey, contain, or store regulated substances by electrically isolating the components from the corrosive elements of the surrounding soil, backfill, groundwater, or any other water, and from other metallic components; PENALTY: \$8,063; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(18) COMPANY: Walter E. Nix, Jr.; DOCKET NUMBER: 2017-0680-WOC-E; IDENTIFIER: RN103472163; LOCATION: Lyons, Burleson County; TYPE OF FACILITY: production, treatment, or distribution of public drinking water; RULES VIOLATED: 30 TAC §30.5(a) and §30.381(b), TWC, §37.003, and Texas Health and Safety Code, §341.034(b), by failing to obtain a valid water system operator license prior to performing process control duties in the production or distribution of public drinking water; PENALTY: \$786; ENFORCEMENT COORDINATOR: Claudia Corrales, (432) 620-6138; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(19) COMPANY: WRIGHT CITY WATER SUPPLY CORPORATION; DOCKET NUMBER: 2017-0847-PWS-E; IDENTIFIER: RN101237063; LOCATION: Troup, Smith County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1), Texas Health and Safety Code, §341.0315(c), and TCEQ Agreed Order Docket Number 2014-1499-PWS-E, Ordering Provision Number 2.a, by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: \$420; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(20) COMPANY: ZR CO, INCORPORATED; DOCKET NUMBER: 2017-0876-PST-E; IDENTIFIER: RN101560779; LOCATION: Garland, Dallas County; TYPE OF FACILITY: a 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; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Claudia Corrales, (432) 620-6138; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201703390  
Gitanijali Yadav  
Acting Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: August 29, 2017

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Enforcement Orders

An agreed order was adopted regarding Sai BBD, Inc dba Johns Quik Stop, Docket No. 2016-1518-PST-E on August 29, 2017, assessing \$6,629 in administrative penalties with \$3,029 deferred. Information concerning any aspect of this order may be obtained by contacting Ian Groetsch, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TEXAS 1 TRAVEL STOP INC, Docket No. 2016-1557-PST-E on August 29, 2017, assessing \$7,253 in administrative penalties with \$1,450 deferred. Information concerning any aspect of this order may be obtained by contacting Sandra Douglas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Kacy Patel and Vaghela Vajubhai dba Kwik Pik Food Store 9, Docket No. 2016-2002-PST-E on August 29, 2017, assessing \$6,251 in administrative penalties with \$1,250 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Stump, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Global Jubilee 2007 Inc., Docket No. 2017-0017-MWD-E on August 29, 2017, assessing \$2,500 in administrative penalties with \$500 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding M&D Development LLC, Docket No. 2017-0182-MWD-E on August 29, 2017, assessing \$1,650 in administrative penalties with \$330 deferred. Information concerning any aspect of this order may be obtained by contacting Ariel Ramirez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TERRA SOUTHWEST, INC., Docket No. 2017-0376-PWS-E on August 29, 2017, assessing \$307 in administrative penalties with \$61 deferred. Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Palmer, Docket No. 2017-0475-PWS-E on August 29, 2017, assessing \$321 in administrative penalties with \$64 deferred. Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding IKO Southwest Inc., Docket No. 2017-0525-AIR-E on August 29, 2017, assessing \$1,250 in administrative penalties with \$250 deferred. Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201703417  
Bridget C. Bohac  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: August 30, 2017



## Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls

Proposed Air Quality Registration Number 147829

APPLICATION. New Boston Concrete Inc., 100 South McCoy Boulevard, New Boston, Texas 75570-3624 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 147829 to authorize the operation of a permanent concrete batch plant. The facility is proposed to be located at 2179 Farm-to-Market Road 1903, Caddo Mills, Hunt County, Texas 75135. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=33.04295&lng=-96.17712&zoom=13&type=r>. This application was submitted to the TCEQ on July 21, 2017. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on August 15, 2017.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at [www.tceq.texas.gov/about/comments.html](http://www.tceq.texas.gov/about/comments.html). Any personal information you submit to the TCEQ will become part of the agency's record; this includes email addresses.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. Written comments about this application may also be submitted at any time during the hearing. The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. The public hearing is not an evidentiary proceeding.

The Public Hearing is to be held:

Monday, October 16, 2017, at 6:00 p.m.

Fletcher Warren Civic Center

5501 South Business Highway 69 South

Greenville, Texas 75402

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all com-

ments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Dallas/Fort Worth Regional Office, located at 2309 Gravel Dr, Fort Worth, Texas 76118-6951, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from New Boston, Concrete, Inc., 100 South McCoy Boulevard, New Boston, Texas 75570-3624, or by calling Mr. M. Todd Graham, Secretary Treasurer at (903) 628-3556.

Notice Issuance Date: August 18, 2017.

TRD-201703412

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 30, 2017



#### Notice of Hearing

Daedelus Corporation

SOAH Docket No. 582-17-5686

TCEQ Docket No. 2017-0743-MWD

Permit No. WQ0015482001

#### APPLICATION.

Daedelus Corporation, 7160 Dallas Parkway, Suite 250, Plano, Texas 75024, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015482001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. TCEQ received this application on May 24, 2016.

The facility will be located approximately 1.0 mile south-southeast of the intersection of County Road 1641 and County Road 148, in Kaufman County, Texas 75160. The treated effluent will be discharged to a ditch; thence to Big Brushy Creek; thence to Kings Creek; thence to Cedar Creek Reservoir in Segment No. 0818 of the Trinity River Basin. The unclassified receiving water uses are minimal aquatic life use for the ditch and high aquatic life use for Big Brushy Creek. The designated uses for Segment No. 0818 are high aquatic life use, public water supply, and primary contact recreation. In accordance with Title 30 of the Texas Administrative Code (TAC) Section 307.5 and the TCEQ Procedures for the Implementation of the Texas Surface Water Quality Standards (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Big Brushy Creek, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Talty Town Office, 9550 Helms Trail, Suite 500, Forney, Texas. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.676944&lng=-96.3725&zoom=13&type=r>. For the exact location, refer to the application.

#### CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing at:

**10:00 a.m. - October 11, 2017**

**William P. Clements Building**

**300 West 15th Street, 4th Floor**

**Austin, Texas 78701**

The contested case hearing will be a legal proceeding similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on July 31, 2017. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.suah.texas.gov](http://www.suah.texas.gov), or in printed format upon request to SOAH."

#### INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our website at <http://www.tceq.texas.gov/>.

Further information may also be obtained from Daedelus Corporation at the address stated above or by calling Mr. Leon Bradshaw, Vice President, at (214) 744-5000.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: August 23, 2017

TRD-201703411

Bridget C. Bohac  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: August 30, 2017



### Notice of Opportunity to Comment on a Shutdown/Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overflow prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 9, 2017**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 9, 2017**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorney is available to discuss the S/DO and/or the comment procedure at the listed phone number; however, comments on the S/DO shall be submitted to the commission in **writing**.

(1) COMPANY: MERITOCRACY GROUP INC. dba Tex Mex Food Mart 4; DOCKET NUMBER: 2016-1560-PST-E; TCEQ ID NUMBER: RN102242898; LOCATION: 1908 North Sugar Road, Suite A, Edinburg, Hidalgo County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system;

and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$5,124; STAFF ATTORNEY: Clayton Smith, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

TRD-201703392  
Gitanjali Yadav  
Acting Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: August 29, 2017



### 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 9, 2017**. 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 9, 2017**. 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: City of Dell City; DOCKET NUMBER: 2017-0101-PWS-E; TCEQ ID NUMBER: RN101210409; LOCATION: intersection of West 1st Street and Dodson Street, Dell City, Hudspeth County; TYPE OF FACILITY: public water system; 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 (ED) each quarter by the tenth day of the month following the end of the quarter; 30 TAC §290.117(c)(2)(C), (h), and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the ED, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples; and 30 TAC §290.117(c)(2)(B), (h), and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the ED; PENALTY: \$955; STAFF ATTORNEY: Eric Grady, Litigation Divi-



sion, MC 175, (512) 239-0655; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(2) COMPANY: C-Store Products Inc dba The Gas Station; DOCKET NUMBER: 2017-0243-PST-E; TCEQ ID NUMBER: RN102033875; LOCATION: 203 South Broad Street, Saint Jo, Montague 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: \$3,750; STAFF ATTORNEY: Eric Grady, Litigation Division, MC 175, (512) 239-0655; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(3) COMPANY: MAGNOLIA TRUCK TIRE SERVICE, INC.; DOCKET NUMBER: 2016-1138-MSW-E; TCEQ ID NUMBER: RN104913215; LOCATION: 620 Gellhorn Drive, Houston, Harris County; TYPE OF FACILITY: scrap tire processing and transport facility; RULES VIOLATED: 30 TAC §328.60(a), by failing to obtain a scrap tire storage site registration for the facility prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in containers; and 30 TAC §328.63(c), by failing to obtain a registration to process scrap tires; PENALTY: \$7,500; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: MURPHY OIL USA, INC.; DOCKET NUMBER: 2016-0878-PST-E; TCEQ ID NUMBER: RN102257961; LOCATION: 333 East United States Highway 82, Sherman, Grayson County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(b)(2), by failing to maintain all components of a UST system electrically isolated from the corrosive elements of the surrounding soil, backfill, groundwater, or any other water, and from other metallic components; 30 TAC §334.46(c)(1), by failing to design and install the piping layout in a manner that will minimize the crossing of other lines and conduits, and the crossing of tanks and other UST system components; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; and 30 TAC §334.7(a)(1) and (c), and §334.8(c)(4)(A)(vi)(II), by failing to register with the commission, on authorized agency forms, USTs in existence on or after September 1, 1987, by submitting a properly completed UST registration and self-certification form to the agency within 30 days after the date any regulated substance was placed into the USTs; PENALTY: \$40,014; STAFF ATTORNEY: Isaac Ta, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: South Central Industrial Properties VII, L.P.; DOCKET NUMBER: 2016-0153-PWS-E; TCEQ ID NUMBER: RN106229925; LOCATION: 8807 Highway 225, La Porte, Harris County; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.41(c)(3)(A), by failing to submit well completion data to the executive director for review and approval prior to placing a well into service as a public water supply source; PENALTY: \$52; STAFF ATTORNEY: Elizabeth Carroll Harkrider, Litigation Division, MC 175, (512) 239-2008; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Ty Osmani dba Lucky Truck Stop; DOCKET NUMBER: 2016-1036-PST-E; TCEQ ID NUMBER: RN105061006; LOCATION: 31242 United States Highway 82, Whitesboro, Grayson County; TYPE OF FACILITY: an underground storage tank (UST) system and a truck stop with retail sales of gasoline; RULES VIOLATED: Texas Health and Safety Code, §382.085(b) and 30 TAC §115.221, by failing to control displaced vapors from a stationary gasoline storage container located at a motor vehicle fuel dispensing station located in a covered attainment county; 30 TAC §334.45(c)(3)(A), by failing to install a secure anchor at the base of the dispenser and include a fusible link designed to provide a positive shut-off product flow in the event that a fire, collision, or other emergency occurs at the dispenser end of the pressurized line; and 30 TAC §334.602(a)(4), by failing to ensure that at least one certified operator - Class A, B, or C - is present at the facility during hours of operation; PENALTY: \$8,439; STAFF ATTORNEY: Isaac Ta, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Ty Osmani dba Lucky Stop 8 and Lucky Stop 2; DOCKET NUMBER: 2016-0751-PST-E; TCEQ ID NUMBERS: RN102247178 and RN101445005; LOCATIONS: 1621 Texoma Parkway, Sherman (Facility 1) and 4916 South Texoma, Denison (Facility 2), Grayson County; TYPE OF FACILITIES: underground storage tank (UST) systems and convenience stores 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 at Facility 1 and 2 for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$7,500; STAFF ATTORNEY: Isaac Ta, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Ty Osmani dba Lucky Stop 10; DOCKET NUMBER: 2016-0774-PST-E; TCEQ ID NUMBER: RN102248036; LOCATION: 429 North Sam Rayburn Freeway, Sherman, Grayson 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); and 30 TAC §334.10(b)(1)(B) and §334.51(c)(1), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$5,000; STAFF ATTORNEY: Isaac Ta, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: YORK INC dba Discount Mart; DOCKET NUMBER: 2017-0155-PST-E; TCEQ ID NUMBER: RN101560647; LOCATION: 1660 West Lingleville Road, Stephenville, Erath 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); and TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$2,567; STAFF ATTORNEY: Adam Taylor, Litigation Division, MC 175, (512) 239-3345; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201703393



### 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 9, 2017**. 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 9, 2017**. 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: Alan Glenn Johnson and Jeff Milton Haney dba Big Boyz Tire Shop; DOCKET NUMBER: 2017-0258-PST-E; TCEQ ID NUMBER: RN101808244; LOCATION: 1500 West Reverend Doctor Ransom Howard Street, Port Arthur, Jefferson County; TYPE OF FACILITY: inactive underground storage tank (UST) system; RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: \$3,937; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Donald E. Schigut dba Schigut Property WS and Virginia A. Schigut dba Schigut Property WS; DOCKET NUMBER: 2015-0364-PWS-E; TCEQ ID NUMBER: RN107033318; LOCATION: 1415 South United States Highway 281, Marble Falls,

Burnet County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code (THSC), §341.035(a) and 30 TAC §290.39(e)(1) and (h)(1), by failing to submit plans and specifications to the executive director (ED) for review and approval prior to the establishment of a new public water system; THSC, §341.033(d) and 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(A) and (B) and (f), by failing to collect routine distribution water samples for coliform analysis and failing to post public notification and submit a copy of the public notification to the ED regarding the failure to conduct coliform monitoring; 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A) and (B) and (f), by failing to submit Disinfectant Level Quarterly Operating Reports (DLQORs) to the ED each quarter by the tenth day of the month following the end of the quarter, and failing to post public notification and submit a copy of the public notification to the ED regarding the failure to submit DLQORs; 30 TAC §290.117(c)(2)(A) and (i)(1), by failing to collect semiannual lead and copper tap samples at the required five sample sites, have the samples analyzed at an approved laboratory, and submit the results to the ED; and TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay Public Health Service fees and associated late fees for TCEQ Financial Administration Account Number 90270147; PENALTY: \$2,068; STAFF ATTORNEY: Eric Grady, Litigation Division, MC 175, (512) 239-0655; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929.

(3) COMPANY: MARQUIS CONSTRUCTION SERVICES, LLC; DOCKET NUMBER: 2016-1782-MLM-E; TCEQ ID NUMBER: RN106395817; LOCATION: 29203 Farm-to-Market Road 2004 near Angleton, Brazoria County; TYPE OF FACILITY: surface coating and abrasive cleaning operations; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(a) and (b), and 30 TAC §101.4, by failing to prevent nuisance conditions; THSC, §382.085(b), 30 TAC §106.6(b) and §106.452(2)(A), and Permit by Rule Registration Number 102407, by failing to comply with the abrasive usage rate of one ton per day during dry abrasive cleaning operations; THSC, §382.085(b) and 30 TAC §111.201, by causing, suffering, allowing, or permitting outdoor burning within the State of Texas; and 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of municipal solid waste; PENALTY: \$10,621; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Tim Wilson and Teresa Wilson; DOCKET NUMBER: 2017-0079-MSW-E; TCEQ ID NUMBER: RN109341420; LOCATION: 123 Banks Road, Big Spring, Howard County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) site; RULES VIOLATED: 30 TAC §330.7(a), by failing to obtain authorization from the TCEQ prior to engaging in any activity of storage, processing, removal, or disposal of MSW; and 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: \$7,500; STAFF ATTORNEY: Adam Taylor, Litigation Division, MC 175, (512) 239-3345; REGIONAL OFFICE: Midland Regional Office, 9900 W IH-20, Suite 100, Midland, Texas 79706-5406, (432) 570-1359.

TRD-201703394  
Gitanijali Yadav  
Acting Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: August 29, 2017



## Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 307

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 307, Texas Surface Water Quality Standards, §§307.2, 307.3, 307.6, 307.7, 307.9, and 307.10, under the requirements of Texas Government Code, Chapter 2001, Subchapter B. The proposed rulemaking would provide a periodic public review and revision of the Texas Surface Water Quality Standards, as provided for in the Texas Water Code, §26.023 and required by the federal Clean Water Act, §303(c).

The commission proposes substantive and editorial changes, including numerous revisions of toxic criteria to incorporate new data on toxicity effects, revisions to provide clarity on how water quality standards would be assessed using monitoring data for bacteria, and numerous revisions for the uses and criteria of individual water bodies in order to incorporate new data and the results of recent use-attainability analyses (UAAs). Proposed changes also include the creation of a new segment, Blind Oso Bay (Segment 2486), based on the results of a UAA.

The commission will hold a public hearing on this proposal in Austin on October 16, 2017, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The webcast from this hearing may be viewed at <http://www.texasadmin.com/tceqs.shtml>. 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.

In conjunction with the hearing, the commission will also take written and oral comments on the proposed changes to the *Procedures to Implement the Texas Surface Water Quality Standards* (IPs). The IPs provide guidance and explanation of the general and technical procedures used in implementing the standards in wastewater discharge permits. The IPs reflect editorial and substantive changes necessitated by changes to Chapter 307 as well as clarification of some subjects and new information on others.

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 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

### Public Comment for Proposed Rule Revisions

Written comments may be submitted to Kris Hogan, 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://www1.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 2016-002-307-OW. The comment period closes on October 17, 2017. Copies of the proposed rulemaking can be obtained from the commission's website at [http://www.tceq.texas.gov/rules/propose\\_adopt.html](http://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Debbie Miller, Monitoring and Assessment Section, at (512) 239-1703.

### Public Comment for Proposed IPs Revisions

Written comments on the proposed revisions to the IPs may be submitted to Peter Schaefer, MC 150, Water Quality Division, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4420. Electronic comments may be submitted via email to [IPCOMMNT@tceq.texas.gov](mailto:IPCOMMNT@tceq.texas.gov). File size

restrictions may apply to comments being submitted via e-mail. All comments should reference the Implementation Procedures, RG-194. The comment period closes on October 17, 2017. Copies of the proposed guidance can be obtained from the commission's website at [https://www.tceq.texas.gov/waterquality/standards/WQ\\_stds](https://www.tceq.texas.gov/waterquality/standards/WQ_stds). For further information regarding changes to the IPs, please contact Peter Schaefer, Implementation Procedures Coordinator, Water Quality Division, at (512) 239-4372.

TRD-201703350

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: August 25, 2017



## Notice of Water Quality Application

The following notices were issued on August 23, 2017.

The following does not require publication in a newspaper. Written comments or requests for a public meeting 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 ISSUED DATE OF THE NOTICE.

### INFORMATION SECTION

DENNIS JAMES SCHOUTEN & LINDA LOUISE SCHOUTEN have applied for a minor amendment of Texas Pollutant Discharge Elimination System Permit No. WQ0004133000, for a Concentrated Animal Feeding Operation (CAFO), to reconfigure land management units (LMUs) #1 and #2 in order to add a center pivot to LMU #1; decrease the acreage of LMU #4 from 82 to 80 acres; and add concrete settling basins, three loafing barns, and one settling pit to the production area. The currently authorized maximum capacity of 999 head, all of which are milking cows, remains unchanged. The facility is located at 17743 North State Highway 108 at 17743 North State Highway 108 in Stephenville, Erath County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our web site at [www.TCEQ.texas.gov](http://www.TCEQ.texas.gov). Si desea información en español, puede llamar al (800) 687-4040.

TRD-201703409

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 30, 2017



## Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on August 25, 2017, in the matter of the Executive Director of the Texas Commission on Environmental Quality v. TEXAS ARCHITECTURAL AGGREGATE, INC.; SOAH Docket No. 582-17-0377; TCEQ Docket No. 2015-1825-WQ-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against TEXAS ARCHITECTURAL AGGREGATE, INC. on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30

days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Mehgan Taack, Office of the Chief Clerk, (512) 239-3300.

TRD-201703410

Bridget C. Bohac  
Chief Clerk

Texas Commission on Environmental Quality

Filed: August 30, 2017

## Texas Ethics Commission

### List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Jennifer Griggs at (512) 463-5800.

#### **Deadline: Personal Financial Statement due June 30, 2017**

Kelley Sullivan, 2069 FM 2498, Crockett, Texas 75835

Sharon Breckenridge Thomas, 18106 Brookwood Forest, San Antonio, Texas 78252

Allison Lowery, MC W619, 701 W. 51st Str., Austin, Texas 78751

Wesley Terrell, 9011 Prominence Dr., Dallas, Texas 75238

TRD-201703302

Seana Willing

Executive Director

Texas Ethics Commission

Filed: August 24, 2017

## Texas Facilities Commission

### Request for Proposals #303-9-20613

The Texas Facilities Commission (TFC), on behalf of the Comptroller of Public Accounts - Audit (CPA), announces the issuance of Request for Proposals (RFP) #303-9-20613. TFC seeks a five (5) or ten (10) year lease of approximately 4,696 square feet of office space in Denton or Collin County, Texas.

The deadline for questions is September 8, 2017 and the deadline for proposals is September 26, 2017 at 3:00 p.m. The award date is October 26, 2017. 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, Karissa McDonald, at (512) 463-5649. 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=143477](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=143477).

TRD-201703343

Kay Molina

General Counsel

Texas Facilities Commission

Filed: August 25, 2017

## General Land Office

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of July 20, 2017, through August 24, 2017. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, September 1, 2017. The public comment period for this project will close at 5:00 p.m. on Monday, October 2, 2017.

#### FEDERAL AGENCY ACTIONS:

**Applicant:** Port of Houston Authority

**Location:** Jacintoport Slip (Houston Ship Channel), Houston, Harris County, Texas

**LATITUDE & LONGITUDE (NAD 83):** 29.748578 North -95.110014 West

**Project Description:** The applicant proposed to perform maintenance dredging activities at the existing Jacintoport Terminal and add seven new dredged material placement areas (DMPAs). The activities include hydraulic and silt blade dredging of approximately 12,000 cubic yards of material from the existing wharves to a -41.5 feet mean lower low water (MLLW) and to dispose of the material into existing DMPAs. The proposed dredging area is approximately 3.79 acres.

**CMP Project No:** 17-1284-F1

**Type of Application:** U.S. Army Corps of Engineers (USACE) permit application #SWG-1995-02296. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA).

**Applicant:** Brazoria County Engineering Department

**Location:** San Bernard River and Gulf of Mexico, Brazoria County, Texas

**LATITUDE & LONGITUDE (NAD 83):** Dredge Start: 28.86970 North -95.44397 West; Dredge Stop: 28.85246 North -95.43961 West; Mitigation Site: 28.85934 North -95.43930 West; Surf Placement Area: 28.84492 North -95.48025 West

**Project Description:** The applicant proposes to perform hydraulic dredging to restore the mouth of the San Bernard River. Approximately 123,000 cubic yards of materials would be dredged initially, and maintenance dredging would be performed every two years thereafter. The proposed dredging would impact 0.17 acres of beach area, and 0.35 acres of marsh within the dredging footprint. The applicant proposes to discharge suitable sand material into the surf zone for down shore beach nourishment. Dredge material suitable for marsh creation will be used at the mitigation site.

**CMP Project No:** 17-1290-F1

**Type of Application:** U.S. Army Corps of Engineers (USACE) permit application #SWG-2015-000603. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under Section 401 of the Clean Water Act.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from Mr. Jesse Solis, P.O. Box 12873, Austin, Texas 78711-2873, or via email at [federal.consistency@glo.texas.gov](mailto:federal.consistency@glo.texas.gov). Comments should be sent to Mr. Solis at the above address or by email.

TRD-201703403

Anne L. Idsal

Chief Clerk/Deputy Land Commissioner

General Land Office

Filed: August 29, 2017

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## Texas Health and Human Services Commission

### Notice of Public Hearing on Proposed Medicaid Payment Rate for Truman W. Smith Children's Care Center

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on September 22, 2017, at 9:00 a.m. to receive public comment on the proposed payment rate for the Truman W. Smith Children's Care Center, a nursing facility in the pediatric care facility special reimbursement class of the Nursing Facility program.

The public hearing will be held in Conference Room 5155, on the 5th floor of the Brown Heatly Building, located at 4900 North Lamar Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. Free parking is available in front of the building and in the adjacent parking garage. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** HHSC proposes to decrease the payment rate for the pediatric care facility special reimbursement class, of which the Truman W. Smith Children's Care Center is the sole provider, from \$270.17 a day to \$269.75 a day. The proposed rate will be effective September 1, 2017.

**Methodology and Justification.** The proposed payment rate was calculated in accordance with Title 1 of the Texas Administrative Code §355.307, which addresses the reimbursement setting methodology for nursing facilities.

**Briefing Package.** A briefing package describing the proposed payment rate will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after September 8, 2017. Interested parties may also obtain a copy of the briefing package prior to the hearing by contacting the HHSC Rate Analysis Department by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [RAD-LTSS@hhsc.state.tx.us](mailto:RAD-LTSS@hhsc.state.tx.us). In addition, the briefing package will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rate may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Health and Human Services Commission, Rate Analysis Department, 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](mailto:RAD-LTSS@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to the Health and Human Services Commission, Rate Analysis Department, H-400, Brown-Heatly Building, 4900 North Lamar Boulevard, Austin, Texas 78751.

*Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401 at least 72 hours prior to the hearing so appropriate arrangements can be made.*

TRD-201703406

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: August 29, 2017

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### Notice of Public Hearing on Proposed Medicaid Payment Rates for Anesthesia Services

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on September 20, 2017, at 9:00 a.m., to receive comment on proposed Medicaid payment rates for Anesthesia Services.

The public hearing will be held in the John H. Winters building, Public Hearing Room located at 701 West 51st Street, Austin, Texas. Entry is through security at the main entrance of the building, which faces West 51st Street. HHSC also will broadcast the public hearing; the broadcast can be accessed at <http://legacy-hhsc.hhsc.state.tx.us/news/web-casting.asp>. The broadcast will be archived and can be accessed on demand at the same website. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The payment rates for Anesthesia Services are proposed to be effective November 1, 2017.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners;

§355.8221, which addresses the reimbursement methodology for certified registered nurse anesthetists; and

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

**Briefing Package.** A briefing package describing the proposed payments rates will be available on or after September 6, 2017. Interested parties may obtain a copy of the briefing package online at <http://legacy-hhsc.hhsc.state.tx.us/rad/rate-packets.shtml> or by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by email at [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@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, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by email to [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis,

Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd,  
Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require  
auxiliary aids or services should contact Rate Analysis at (512) 730-  
7401 at least 72 hours in advance, so appropriate arrangements can be  
made.

TRD-201703419  
Karen Ray  
Chief Counsel

Texas Health and Human Services Commission  
Filed: August 30, 2017

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**Department of State Health Services**  
Licensing Actions for Radioactive Materials

## LICENSING ACTIONS FOR RADIOACTIVE MATERIALS

During the first half of August, 2017, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Safety Licensing Branch has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.state.tx.us.

### NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Houston	Tenaris Bay City Inc.	L06876	Houston	00	08/11/17
The Woodlands	Baylor St. Lukes Medical Group	L06875	The Woodlands	00	08/07/17
Waxahachie	Baylor Medical Center at Waxahachie dba Baylor Scott & White Medical Center – Waxahachie	L06874	Waxahachie	00	08/07/17

### AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Austin	St. Davids Healthcare Partnership L.P., L.L.P. dba St. Davids Medical Center	L00740	Austin	146	08/01/17
Austin	Austin Heart P.L.L.C.	L04623	Austin	92	08/14/17
Beaumont	Exxonmobil Oil Corporation	L00603	Beaumont	100	08/01/17
Corpus Christi	Cardinal Health	L04043	Corpus Christi	53	08/11/17
Dallas	Peloton Therapeutics Inc.	L06490	Dallas	07	08/04/17
Dallas	UT Southwestern Medical Center	L06663	Dallas	15	08/11/17
Dallas	BT East Dallas JV L.L.P. dba Baylor Scott & White Medical Center – White Rock	L06791	Dallas	03	08/07/17
Deer Park	Total Petrochemicals & Refining USA Inc.	L00302	Deer Park	65	08/07/17
Deer Park	Total Petrochemicals & Refining USA Inc.	L00302	Deer Park	66	08/10/17
El Paso	Tenet Hospitals Limited dba The Hospitals of Providence Sierra Campus	L02365	El Paso	97	08/09/17

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

El Paso	El Paso Healthcare System Ltd. dba Del Sol Medical Center	L02551	El Paso	75	08/02/17
Houston	Memorial Hermann Health System dba Memorial Hermann Southwest Hospital	L00439	Houston	232	08/11/17
Houston	The University of Texas MD Anderson Cancer Center	L00466	Houston	169	08/08/17
Houston	Memorial Hermann Health System	L02412	Houston	124	08/14/17
Houston	CHCA West Houston L.P. dba West Houston Medical Center	L06055	Houston	24	08/14/17
La Porte	Akzo Nobel Polymer Chemicals L.L.C.	L04372	La Porte	19	08/11/17
Lubbock	University Medical Center	L04719	Lubbock	159	08/11/17
Midland	Midland County Hospital District dba Midland Memorial Hospital	L00728	Midland	112	08/03/17
San Angelo	Regional Employee Assistance Program dba Community Medical Associates	L06172	San Angelo	08	08/01/17
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	240	08/07/17
San Antonio	Methodist Healthcare System of San Antonio Ltd., L.L.P.	L00594	San Antonio	365	08/02/17
San Antonio	Texas Oncology P.A.	L06747	San Antonio	06	08/01/17
San Antonio	Texas Oncology P.A.	L06759	San Antonio	04	08/09/17
Throughout TX	Rodriguez Engineering Laboratories L.L.C. dba Rodriguez Engineering Laboratories	L04700	Austin	22	08/04/17
Throughout TX	Professional Service Industries Inc.	L04947	Austin	26	08/08/17
Throughout TX	Weatherford International L.L.C.	L04286	Benbrook	118	08/11/17
Throughout TX	Texas A&M University	L00448	College Station	147	08/08/17
Throughout TX	Berry GP Inc.	L01575	Corpus Christi	63	08/10/17
Throughout TX	Earthco L.L.C.	L06213	Harlingen	05	08/08/17
Throughout TX	Signum Instruments Inc.	L06738	Houston	05	08/04/17
Throughout TX	Kleinfelder Central Inc.	L01351	Irving	92	08/11/17
Throughout TX	ARC Inspection Services L.L.C.	L06864	Krum	01	08/02/17
Throughout TX	ARC Inspection Services L.L.C.	L06864	Krum	02	08/08/17
Throughout TX	Terra Testing Inc.	L02464	Lubbock	39	08/08/17
Throughout TX	Inspection Specialties Inc.	L06834	Midland	01	08/09/17
Throughout TX	Chevron Phillips Chemical Company L.P.	L00230	Pasadena	93	08/04/17
Throughout TX	Petrochem Inspection Services Inc. dba TUV Sud America Chemical Oil and Gas	L04460	Pasadena	128	08/02/17
Throughout TX	Schlumberger Technology Corporation	L06303	Sugar Land	10	08/09/17
Waxahachie	Baylor Medical Center at Waxahachie dba Baylor Scott & White Medical Center – Waxahachie	L04536	Waxahachie	52	08/08/17
Wichita Falls	WFCC Radiation Management Company L.L.C. dba Texoma Cancer Center	L06288	Wichita Falls	10	08/02/17

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Cuero	DeWitt Medical District dba Cuero Regional Hospital	L02448	Cuero	30	08/08/17
Paris	Khalid Shafiq M.D., P.A. dba Paris Cardiology Center	L06007	Paris	05	08/01/17
Tomball	Northwest Houston Heart Center P.A.	L05958	Tomball	20	08/04/17
Waco	Waco Cardiology Associates	L05158	Waco	24	08/10/17
Wichita Falls	Wichita Falls Cardiac Care P.A.	L06088	Wichita Falls	02	08/10/17



TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Midland	Midland Certified Reagent Company L.L.C.	L06082	Midland	01	08/11/17
The Woodlands	Woodlands-North Houston Heart Associate	L04253	The Woodlands	36	08/08/17
Wichita Falls	Jerry K. Myers M.D. Associated dba Breast Center of Texoma	L06221	Wichita Falls	06	08/09/17

TRD-201703407  
 Lisa Hernandez  
 General Counsel  
 Department of State Health Services  
 Filed: August 29, 2017



Maximum Fees Allowed for Providing Health Care Information Effective September 1, 2017

The Texas Department of State Health Services licenses and regulates the operation of general and special hospitals in accordance with Chapter 241 of the Texas Health and Safety Code. In 1995, the Texas Legislature amended this law to address the release and confidentiality of health care information. In 2009, the Texas Legislature amended the statute again to change the definition of health care information and to add a category of fees for records provided on digital or other electronic media and delivered electronically.

In accordance with Health and Safety Code, §241.154(e), the fee effective as of January 20, 2017, for providing a patient's health care information has been increased by 1.8% to reflect the most recent changes to the consumer price index that measures the average changes in prices of goods and services purchased by urban wage earners and clerical workers as published by the Bureau of Labor Statistics of the United States Department of Labor.

This information is provided only as a courtesy to licensed hospitals. Hospitals are responsible for verifying that fees for health care information are charged in accordance with Health and Safety Code, Chapters 241, 311, and 324.

The current fees relate to the following provisions of the Health and Safety Code, §241.154(b) - (d):

(b) Except as provided by subsection (d), the hospital or its agent may charge a reasonable fee for providing the health care information except payment information and is not required to permit the examination, copying, or release of the information requested until the fee is paid unless there is a medical emergency. The fee may not exceed the sum of:

(1) a basic retrieval or processing fee, which must include the fee for providing the first 10 pages of copies and which may not exceed \$46.61; and

(A) a charge for each page of:

- (i) \$1.57 for the 11th through the 60th page of provided copies;
- (ii) \$.77 for the 61st through the 400th page of provided copies;
- (iii) \$.42 for any remaining pages of the provided copies; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies;

(2) if the requested records are stored on microform, a retrieval or processing fee, which must include the fee for providing the first 10 pages of the copies and which may not exceed \$71.00; and

(A) \$1.57 per page thereafter; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies; or

(3) if the requested records are provided on a digital or other electronic medium and the requesting party requests delivery in a digital or electronic medium, including electronic mail:

(A) a retrieval or processing fee, which may not exceed \$84.44; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies.

(c) In addition, the hospital or its agent may charge a reasonable fee for:

(1) execution of an affidavit or certification of a document, not to exceed the charge authorized by Civil Practice and Remedies Code, §22.004; and

(2) written responses to a written set of questions, not to exceed \$10.00 for a set.

(d) A hospital may not charge a fee for:

(1) providing health care information under subsection (b) to the extent the fee is prohibited under Health and Safety Code, Chapter 161, Subchapter M;

(2) a patient to examine the patient's own health care information;

(3) providing an itemized statement of billed services to a patient or third-party payer, except as provided under Health and Safety Code, §311.002(f); or

(4) health care information relating to treatment or hospitalization for which workers' compensation benefits are being sought, except to the extent permitted under Labor Code, Chapter 408.

The statutes referenced in this notice may be found on the Internet at: Health and Safety Code, <http://www.statutes.legis.state.tx.us?link=HS> Labor Code, <http://www.statutes.legis.state.tx.us?link=LA>

Civil Practice and Remedies Code, <http://www.statutes.legis.state.tx.us?link=CP>

Should you have questions, you may contact the Department of State Health Services, Facility Licensing Group, Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347, telephone (512) 834-6648.

TRD-201703416

◆ ◆ ◆  
**Order Placing Acryl Fentanyl into Schedule I Temporarily Listed Substances**

The Administrator of the Drug Enforcement Administration issued a temporary scheduling order to schedule the synthetic opioid N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide (Other names: acryl fentanyl or acryloylfentanyl) including its isomers, esters, ethers, salts and salts of isomers, esters, and ethers in schedule I of the Controlled Substances Act effective July 14, 2017. This temporary scheduling order was published in the July 14, 2017 issue of the *Federal Register*; Volume 82, Number 134, pages 32453-32457. The Administrator has taken action based on the following.

1. Acryl fentanyl has a high potential for abuse.
2. Acryl fentanyl has no current accepted medical use in treatment in the United States.
3. There is a lack of accepted safety for use under medical supervision for acryl fentanyl.
4. Control of acryl fentanyl is necessary to avoid an imminent hazard to the public.

Pursuant to Health and Safety Code, §481.034(g), as amended by the 75th Legislature, of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, at least thirty-one days have expired since notice of the above referenced actions were published in the *Federal Register*; and, in the capacity as Commissioner of the Texas Department of State Health Services, John Hellerstedt, M.D., does hereby order that the substance acryl fentanyl be placed into Schedule I temporarily listed substances.

**SCHEDULE I**

Schedule I consists of:

- Schedule I opiates  
(no change)
- Schedule I opium derivatives  
(no change)
- Schedule I hallucinogenic substances  
(no change)
- Schedule I stimulants  
(no change)
- Schedule I depressants  
(no change)
- Schedule I Cannabimimetic agents  
(no change)
- Schedule I temporarily listed substances subject to emergency scheduling by the United States Drug Enforcement Administration.

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances or that contains any of the substance's salts, esters, ethers, isomers, optical isomers, positional isomers, geometric isomers and salts of isomers, esters, and ethers if the existence of the

salts, isomers, esters, ethers and salts of isomers, esters and ethers is possible within the specific chemical designation.

- (1) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (Other names: "AB-CHMINACA");
- (2) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (Other names: "AB-PINACA");
- (3) [1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone (Other names: "THJ-2201");
- (4) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (common names: MAB-CHMINACA and ADB-CHMINACA);
- (5) N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide, also known as N-(1-phenethylpiperidin-4-yl)-N-phenylbutanamide (Other name: butyryl fentanyl);
- (6) N-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-N-phenylpropionamide, also known as N-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidinyl]-N-phenylpropanamide (Other name: beta-hydroxythiofentanyl);
- (7) 3,4-Dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide (Other name: U47700);
- (8) N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide (Other name: Furanyl fentanyl)
- (9) methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other names: 5F-ADB; 5F-MDMB-PINACA);
- (10) methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate (Other names: 5F-AMB);
- (11) N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide (Other names: 5F-APINACA, 5F-AKB48;
- (12) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide (Other names: ADB-FUBINACA);
- (13) methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate (Other names: MDMB-CHMICA, MMB-CHMINACA);
- (14) methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other names: MDMB-FUBINACA);
- (15) N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide (Other names: 4-fluoroisobutyryl fentanyl or para-fluoroisobutyryl fentanyl); and,
- \* (16) N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide (Other names: acryl fentanyl or acryloylfentanyl).

Changes to the schedules are marked with an asterisk (\*).

TRD-201703423  
Lisa Hernandez  
General Counsel  
Department of State Health Services  
Filed: August 30, 2017

◆ ◆ ◆  
**Texas Higher Education Coordinating Board**

Notice of Intent to Engage in Negotiated Rulemaking - Dual Credit Course Limitations

(Texas Public Universities, Community Colleges, Lamar State Colleges, and Texas State Technical Colleges)

Senate Bill 1091, 85th Texas Legislature, Regular Session, relating to limitations on courses that may be offered for dual credit by school districts and public institutions of higher education, amends Texas Education Code §§28.009, 51.968, and 130.008. The Texas Higher Education Coordinating Board ("THECB" or "Board") and Texas Education Agency ("TEA") plan to engage in negotiated rulemaking to coordinate the adoption of rules for the implementation of these amendments.

In identifying persons likely affected by the proposed rules, the Convener of Negotiated Rulemaking sent a memo via email to all chancellors and presidents at Texas public universities, community colleges, Lamar State Colleges, and Texas State Technical Colleges soliciting their interest and willingness to participate in the negotiated rulemaking process, or to nominate a representative from their system/campus.

From this effort, 43 individuals responded (out of approximately 149 affected entities) and expressed an interest to participate or nominated someone from their system/institution to participate on the negotiated rulemaking committee for dual credit course limitations. The positions held by the volunteers and nominees include presidents, provosts, directors, and coordinators. This indicates a probable willingness and authority of the affected interests to negotiate in good faith and a reasonable probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rule.

The following is a list of the stakeholders who are significantly affected by this rule and will be represented on the negotiated rulemaking committee for dual credit course limitations:

1. Public Universities;
2. Public Community Colleges;
3. Lamar State Colleges;
4. Texas State Technical Colleges; and
5. Texas Higher Education Coordinating Board.

The THECB proposes to appoint the following 17 individuals to the negotiating rulemaking committee for dual credit course limitations to represent affected parties and the agencies:

#### Public Universities

Susan Allen, Assistant Vice President, Academic Affairs, West Texas A&M University (Texas A&M University System)

Michael Adams, Interim Dean, Texas Southern University

Donald Topliff, Provost, Angelo State University (Texas Tech University System)

Peggy Semingson, Associate Professor, Literacy Studies, The University of Texas at Arlington (The University of Texas System)

Heidi Kennedy, Assistant Dean, Undergraduate Academic Affairs, University of Houston

Bob Mong, President, University of North Texas at Dallas (University North Texas System)

#### Public Community Colleges

Shasta Buchanan, Executive Director, College-High School Relations, Austin Community College

Bob Montez, Director, Early College Programs, Del Mar College

Terry Booker, Coordinator, Dual Credit, Kilgore College

Deana Savage, Special Advisor to the President, Midland College

Andrew Fisher, Provost, North Central Texas College

Pamela Campbell, Associate Vice Chancellor, Student Success Partnerships, San Jacinto College District

Hector Gonzales, President, Southwest Texas Junior College

William Coppola, President, Southeast Campus, Tarrant County College District

#### Lamar State Colleges

Gwen Whitehead, Vice President, Academic Affairs, Lamar State College-Orange (Texas State University System)

Texas Education Agency

Lily Laux, Executive Director, School Programs

Texas Higher Education Coordinating Board

Rex Peebles, Assistant Commissioner, Academic Quality and Workforce

Meetings will be open to the public. If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

\* Name and contact information of the person submitting the application;

\* Description of how the persons are significantly affected by the rule and how their interests are different than those represented by the persons named above;

\* Name and contact information of the person being nominated for membership; and

\* Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rulemaking committee for dual credit course limitations. Comments and applications for membership on the committee must be submitted by September 18, 2017 to: Laurie A. Frederick, Convener, Negotiated Rulemaking, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, TX 78711, Fax: (512) 427-6127, Email: laurie.frederick@theccb.state.tx.us.

TRD-201703420

William Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: August 30, 2017



#### Notice of Intent to Engage in Negotiated Rulemaking - Open Educational Resources Grant Program

(Texas Public Universities, Community Colleges, Lamar State Colleges, and Texas State Technical Colleges)

Senate Bill 810, 85th Texas Legislature, Regular Session, relating in part to the use of open educational resources, amends Texas Education Code Chapter 61, Subchapter C, by adding §61.0668, Open Educational Resources Grant Program. The Texas Higher Education Coordinating Board ("THECB" or "Board") intends to engage in negotiated rulemaking to develop rules for the Open Educational Resources Grant Program allocation methodology for public universities, community colleges, Lamar State Colleges, and Texas State Technical Colleges

and to develop procedures for THECB staff to verify the accuracy of the application of that allocation methodology. This is in accordance with the provisions of Texas Education Code §61.0331.

In identifying persons likely affected by the proposed rules, the Convener of Negotiated Rulemaking sent a memo via email to all chancellors and presidents at Texas public universities, community colleges, Lamar State Colleges, and Texas State Technical Colleges soliciting their interest and willingness to participate in the negotiated rulemaking process, or to nominate a representative from their campus.

From this effort, 21 individuals responded (out of approximately 149 affected entities) and expressed an interest to participate or nominated someone from their institution to participate on the negotiated rulemaking committee for Open Educational Resources Grant Program. The positions held by the volunteers and nominees include coordinators, team leaders, deans, directors, and professors. This indicates a probable willingness and authority of the affected interests to negotiate in good faith and a reasonable probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rule.

The following is a list of the stakeholders who are significantly affected by this rule and will be represented on the negotiated rulemaking committee for Open Educational Resources Grant Program:

1. Public Universities;
2. Public Community Colleges;
3. Lamar State Colleges;
4. Texas State Technical Colleges; and
5. Texas Higher Education Coordinating Board.

The THECB proposes to appoint the following 13 individuals to the negotiating rulemaking committee for Open Educational Resources Grant Program to represent affected parties and the agency:

#### Public Universities

Thomas Halling, Associate Professor, University Libraries, Texas AM University

Demetrios Kazakos, Ex-Dean, Professor of Mathematics, Texas Southern University

Justin Louder, Associate Vice Provost, World Wide eLearning, Texas Tech University

Kris Helge, Assistant Dean, Libraries, Texas Woman's University

Ashley Purgason, Assistant Vice President, Strategic Initiatives, The University of Texas at Arlington

Owen Ellard, Senior Director, Libraries, The University of Texas Health Science Center at San Antonio

#### Public Community Colleges

Phillip Anaya, Digital and Open Education Resource Coordinator, Alamo Colleges

Carrie Gits, HLC Librarian and Open Educational Resources Team Leader, Austin Community College

Julie Penley, Interim Vice President, Research and Accountability; Associate Vice President, Instruction and Student Services, El Paso Community College

Jotisa Klemm, Director, Library Services (Southeast Campus), Tarrant County College District

Karla Bryan, Director, Learning Resource Centers, Trinity Valley Community College

#### Texas State Technical Colleges

Kyle Smith, Associate Vice Chancellor for Dual Enrollment and Innovation, Texas State Technical College

#### Texas Higher Education Coordinating Board

Rex Peebles, Assistant Commissioner, Academic Quality and Workforce

Meetings will be open to the public. If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

\* Name and contact information of the person submitting the application;

\* Description of how the persons are significantly affected by the rule and how their interests are different than those represented by the persons named above;

\* Name and contact information of the person being nominated for membership; and

\* Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rulemaking committee for Open Educational Resources Grant Program. Comments and applications for membership on the committee must be submitted by September 18, 2017 to: Laurie A. Frederick, Convener, Negotiated Rulemaking, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, TX 78711, Fax: (512) 427-6127, Email: laurie.frederick@thehb.state.tx.us.

TRD-201703421

William Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: August 30, 2017



#### Notice of Intent to Engage in Negotiated Rulemaking - Workforce Continuing Education

(Texas Public Community Colleges)

House Bill 2994, 85th Texas Legislature, Regular Session, relating to workforce continuing education offered by public community colleges, amends Texas Education Code Chapter 130 by adding Subchapter L, Workforce Continuing Education. The legislation requires the Texas Higher Education Coordinating Board ("THECB" or "Board") to adopt rules for the administration of this Subchapter. The THECB intends to engage in negotiated rulemaking to develop these rules.

In identifying persons likely affected by the proposed rules, the Convener of Negotiated Rulemaking sent a memo via email to all presidents at Texas public community colleges soliciting their interest and willingness to participate in the negotiated rulemaking process, or to nominate a representative from their campus.

From this effort, 21 individuals responded (out of approximately 83 affected entities) and expressed an interest to participate or nominated someone from their institution to participate on the negotiated rulemak-

ing committee for workforce continuing education. The positions held by the volunteers and nominees include deans, directors, and associate vice presidents of continuing education. This indicates a probable willingness and authority of the affected interests to negotiate in good faith and a reasonable probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rule.

The following is a list of the stakeholders who are significantly affected by this rule and will be represented on the negotiated rulemaking committee for workforce continuing education:

1. Public Community Colleges; and
2. Texas Higher Education Coordinating Board.

The THECB proposes to appoint the following 20 individuals to the negotiating rulemaking committee for workforce continuing education to represent affected parties and the agency:

#### Public Community Colleges

Vernell Walker, Dean, Professional and Technical Education, Alamo Colleges District

James Simpson, Dean/Executive Director, Continuing Education, Alvin Community College

Hector Aguilar, Executive Dean, Continuing Education, Austin Community College

Anne Bartlett, Vice President, Industry and Community Resources, Brazosport College

Teresa Chavez, Director, Continuing Education, Central Texas College

Sherry Schumann, Sr. Vice President of Academic, Workforce, and Enrollment Services, Collin College District

Rose Galloway, Associate Vice President, Workforce and Continuing Education, Richland College, Dallas County Community College District

Leonard Rivera, Dean, Continuing Education and Off-Campus Programs, Del Mar College

Marta DeLa Fuente, Director, Continuing Education Health Programs, El Paso Community College

Djuna Forrester, Executive Director, Center for Workplace Learning, Grayson College

Lizza Trenkle, Vice President, Student Services, Hill College

Terry Kidd, Dean, Division of Extended Learning, Houston Community College System

Kerry Schindler, Senior Vice President, Instruction, Ranger College

Sarah Janes, Associate Vice Chancellor, Continuing & Professional Development, San Jacinto College District

Laura Sanchez, Associate Dean, Institutional Research and Effectiveness, South Texas College

Nancy Cure, Associate Vice Chancellor, Academic Affairs, Tarrant County College District

Aubrey Sharpe, Dean, Continuing Studies and Executive Administrator-West Campus, Tyler Junior College

Shari Gould, Director of Continuing Education, Allied Health, Victoria College

Tamara Sealy, Continuing Education Corporate Training Coordinator, Wharton County Junior College

#### Texas Higher Education Coordinating Board

Rex Peebles, Assistant Commissioner, Academic Quality and Workforce

Meetings will be open to the public. If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

\* Name and contact information of the person submitting the application;

\* Description of how the persons are significantly affected by the rule and how their interests are different than those represented by the persons named above;

\* Name and contact information of the person being nominated for membership; and

\* Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rulemaking committee for workforce continuing education. Comments and applications for membership on the committee must be submitted by September 18, 2017 to: Laurie A. Frederick, Convener, Negotiated Rulemaking, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, TX 78711, Fax: (512) 427-6127, Email: laurie.frederick@theccb.state.tx.us.

TRD-201703422

William Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: August 30, 2017



### Texas Department of Insurance

#### Company Licensing

Application to do business in the state of Texas by INSURANCE COMPANY OF THE SOUTH, a foreign fire and/or casualty company. The home office is in Jacksonville, Florida.

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 Jeff Hunt, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201703413

Norma Garcia

General Counsel

Texas Department of Insurance

Filed: August 30, 2017



### Texas Lottery Commission

#### Scratch Ticket Game Number 1877 "Super Loteria"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1877 is "SUPER LOTERIA". The play style is "row/column/diagonal".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1877 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1877.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: THE MOCKINGBIRD SYMBOL, THE CACTUS SYMBOL, THE STRAWBERRY SYMBOL, THE ROADRUNNER SYMBOL, THE BAT SYMBOL, THE PIÑATA SYMBOL, THE COWBOY SYMBOL, THE NEWSPAPER SYMBOL, THE SUNSET SYMBOL, THE COWBOY HAT SYMBOL, THE COVERED WAGON SYMBOL, THE MARACAS SYMBOL, THE LONE STAR SYMBOL, THE

CORN SYMBOL, THE HEN SYMBOL, THE SPEAR SYMBOL, THE GUITAR SYMBOL, THE FIRE SYMBOL, THE MORTAR PESTLE SYMBOL, THE WHEEL SYMBOL, THE PECAN TREE SYMBOL, THE JACKRABBIT SYMBOL, THE BOAR SYMBOL, THE ARMADILLO SYMBOL, THE LIZARD SYMBOL, THE CHILE PEPPER SYMBOL, THE HORSESHOE SYMBOL, THE HORSE SYMBOL, THE SHOES SYMBOL, THE BLUEBONNET SYMBOL, THE CHERRIES SYMBOL, THE OIL RIG SYMBOL, THE MOONRISE SYMBOL, THE RATTLESNAKE SYMBOL, THE WINDMILL SYMBOL, THE SPUR SYMBOL, THE SADDLE SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$200, \$500, \$5,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1877 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
THE MOCKINGBIRD SYMBOL	THEMOCKINGBIRD
THE CACTUS SYMBOL	THE CACTUS
THE STRAWBERRY SYMBOL	THESTRAWBERRY
THE ROADRUNNER SYMBOL	THEROADRUNNER
THE BAT SYMBOL	THE BAT
THE PIÑATA SYMBOL	THE PIÑATA
THE COWBOY SYMBOL	THECOWBOY
THE NEWSPAPER SYMBOL	THENEWSPAPER
THE SUNSET SYMBOL	THE SUNSET
THE COWBOY HAT SYMBOL	THECOWBOYHAT
THE COVERED WAGON SYMBOL	THECOVEREDWAGON
THE MARACAS SYMBOL	THEMARACAS
THE LONE STAR SYMBOL	THELONESTAR
THE CORN SYMBOL	THE CORN
THE HEN SYMBOL	THE HEN
THE SPEAR SYMBOL	THE SPEAR
THE GUITAR SYMBOL	THE GUITAR
THE FIRE SYMBOL	THE FIRE
THE MORTAR PESTLE SYMBOL	THEMORTARPESTLE
THE WHEEL SYMBOL	THE WHEEL
THE PECAN TREE SYMBOL	THEPECANTREE
THE JACKRABBIT SYMBOL	THEJACKRABBIT
THE BOAR SYMBOL	THE BOAR
THE ARMADILLO SYMBOL	THEARMADILLO
THE LIZARD SYMBOL	THELIZARD
THE CHILE PEPPER SYMBOL	THECHILEPEPPER
THE HORSESHOE SYMBOL	THEHORSESHOE
THE HORSE SYMBOL	THE HORSE

THE SHOES SYMBOL	THE SHOES
THE BLUEBONNET SYMBOL	THEBLUEBONNET
THE CHERRIES SYMBOL	THECHERRIES
THE OIL RIG SYMBOL	THEOILRIG
THE MOONRISE SYMBOL	THE MOONRISE
THE RATTLESNAKE SYMBOL	THERATTLESNAKE
THE WINDMILL SYMBOL	THEWINDMILL
THE SPUR SYMBOL	THE SPUR
THE SADDLE SYMBOL	THESADDLE
\$5.00	FIV\$
\$10.00	TEN\$
\$15.00	FTN\$
\$20.00	TWY\$
\$50.00	FFTY\$
\$100	ONHN
\$200	TOHN
\$500	FVHN
\$5,000	FVTH
\$100,000	100TH

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1877), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1877-0000001-001.

H. Pack - A Pack of the "SUPER LOTERIA" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "SUPER LOTERIA" Scratch Ticket Game No. 1877.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "SUPER LOTERIA" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 52 (fifty-two) Play Symbols. The player scratches the CALLER'S CARD area to reveal 21 symbols. The player scratches ONLY the symbols on the PLAY BOARD that match the symbols revealed on the CALLER'S CARD. If the player reveals a complete row, column, or diagonal line, the player wins the prize for that line. BONUS GAMES: The player scratches ONLY the symbols in the BONUS GAMES that match the symbols revealed on the CALLER'S



CARD. If a player reveals all 4 symbols in any one GAME, the player wins the PRIZE for that GAME. El jugador raspa la CARTA DEL GRITÓN para revelar 21 símbolos. El jugador raspa SOLAMENTE los símbolos en la TABLA DE JUEGO que son iguales a los símbolos revelados en las CARTA DEL GRITON. Si el jugador revela una línea completa, horizontal, vertical, o diagonal, el jugador gana el premio para esa línea. JUEGOS DE BONO: El jugador raspa SOLAMENTE los símbolos de los JUEGOS DE BONO que son iguales a los símbolos de la CARTA DEL GRITÓN. Si el jugador revela todos los 4 símbolos en cualquier JUEGO, el jugador gana el PREMIO para ese JUEGO. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

#### 2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 52 (fifty-two) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly 52 (fifty-two) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 52 (fifty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 52 (fifty-two) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. GENERAL: A Ticket can win up to six (6) times in accordance with the approved prize structure.

B. GENERAL: Adjacent Non-Winning Tickets within a Pack will not have matching Play Symbol patterns. Two (2) Tickets have matching Play Symbol patterns if they have the same Play Symbols in the same positions.

C. PLAY BOARD: No matching Play Symbols in the CALLER'S CARD play area.

D. PLAY BOARD: At least eight (8), but no more than twelve (12), CALLER'S CARD Play Symbols will match a symbol on the PLAY BOARD play area on a Ticket.

E. PLAY BOARD: CALLER'S CARD Play Symbols will have a random distribution on the Ticket, unless restricted by other parameters, play action or prize structure.

F. PLAY BOARD: No matching Play Symbols are allowed on the PLAY BOARD play area.

G. BONUS GAMES: Every BONUS GAME Grid will match at least one (1) Play Symbol to the CALLER'S CARD play area.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "SUPER LOTERIA" Scratch Ticket Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100, \$200 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and in-

struct 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 "SUPER LOTERIA" Scratch Ticket Game prize of \$5,000 or \$100,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SUPER LOTERIA" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

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 Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "SUPER LOTERIA" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "SUPER LOTERIA" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 40,080,000 Scratch Tickets in Scratch Ticket Game No. 1877. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1877 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5	4,809,600	8.33
\$10	4,008,000	10.00
\$15	534,400	75.00
\$20	534,400	75.00
\$50	534,400	75.00
\$100	167,334	239.52
\$200	27,388	1,463.41
\$500	4,008	10,000.00
\$5,000	100	400,800.00
\$100,000	20	2,004,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.77. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1877 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1877, 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-201703414  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: August 30, 2017



Scratch Ticket Game Number 2003 "Veterans Cash"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2003 is "VETERANS CASH". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2003 shall be \$2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2003.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, \$\$ SYMBOL, FLAG SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$1,000 and \$30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2003 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	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	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
<b>\$\$ SYMBOL</b>	<b>DBL</b>
<b>FLAG SYMBOL</b>	<b>WIN</b>
\$2.00	TWO\$
\$4.00	FOR\$
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$

\$50.00	FFTY\$
\$100	ONHN
\$1,000	ONTH
\$30,000	30TH

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2003), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2003-000001-001.

H. Pack - A Pack of "VETERANS CASH" Scratch Ticket Games contains 125 Scratch Tickets, packed in plastic shrink-wrapping and fan-folded 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.

I. Non-Winning Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - A Texas Lottery "VETERANS CASH" Scratch Ticket Game No. 2003.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "VETERANS CASH" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 23 (twenty-three) Play Symbols. If the player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "FLAG" Play Symbol, the player wins the prize for that symbol instantly. If the player reveals a "\$\$" 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 Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 23 (twenty-three) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Scratch 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 Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly 23 (twenty-three) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 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 Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. A Ticket can win up to ten (10) times in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play Symbol and Prize Symbol patterns. Two (2) Tickets have matching Play Symbol and Prize Symbol patterns if they have the same Play Symbols and Prize Symbols in the same spots.

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 "FLAG" (WIN) and "\$\$" (DBL) Play Symbols will never appear in the "WINNING NUMBERS" Play Symbol spots.

H. The "\$\$" (DBL) Play Symbol will only 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 (e.g., 5 and \$5).

## 2.3 Procedure for Claiming Prizes.

A. To claim a "VETERANS CASH" Scratch Ticket 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 Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00 or \$100 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "VETERANS CASH" Scratch Ticket Game prize of \$1,000 or \$30,000, the claimant must sign the winning Scratch Ticket

and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "VETERANS CASH" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

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 Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "VETERANS CASH" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "VETERANS CASH" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game

or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the

player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 7,200,000 Scratch Tickets in the Scratch Ticket Game No. 2003. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2003 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$2	748,800	9.62
\$4	576,000	12.50
\$5	115,200	62.50
\$10	86,400	83.33
\$20	57,600	125.00
\$50	46,500	154.84
\$100	3,720	1,935.48
\$1,000	90	80,000.00
\$30,000	6	1,200,000.00

\*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 4.41. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2003 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2003, 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-201703415  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: August 30, 2017



Scratch Ticket Game Number 2021 "\$1,000,000 Big Money"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2021 is "\$1,000,000 BIG MONEY". The play style is "multiple games".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2021 shall be \$20.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2021.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Prize Symbols are: MUSHROOM SYMBOL, DRUM SYMBOL, NEST SYMBOL, TROPHY SYMBOL, MOON SYMBOL, \$25 BURST SYMBOL, RAINBOW SYMBOL, ROSE SYMBOL, STAR SYMBOL, UMBRELLA SYMBOL, CROWN SYMBOL, \$50 BURST SYMBOL, 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, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 5X SYMBOL, 10X SYMBOL, CHERRY SYMBOL, GOLD BAR SYMBOL, BANANA SYMBOL, DICE SYMBOL, SPADE SYMBOL, PINEAPPLE SYMBOL, BELL SYMBOL, SUN SYMBOL, ANCHOR SYMBOL, APPLE SYMBOL, STACK OF BILLS SYMBOL, HORSESHOE SYMBOL, PEAR SYMBOL,

LEMON SYMBOL, HEART SYMBOL, STRAWBERRY SYMBOL, SAFE SYMBOL, KEY SYMBOL, POT OF GOLD SYMBOL, 4 LEAF CLOVER SYMBOL, WISHBONE SYMBOL, LIGHTNING BOLT SYMBOL, DIAMOND SYMBOL, \$\$\$ SYMBOL, JOKER SYMBOL, ACORN SYMBOL, BALL CAP SYMBOL, BALLOON SYMBOL, BIRD SYMBOL, BUTTERFLY SYMBOL, COWBOY BOOT SYMBOL, COWBOY HAT SYMBOL, COW HEAD SYMBOL, DAISY SYMBOL, DOLLAR BILL SYMBOL, FEATHER SYMBOL, FIRE & LOGS SYMBOL, FISH SYMBOL, FROG SYMBOL, ICE CREAM CONE SYMBOL, LADY BUG SYMBOL, PIGGY BANK SYMBOL, RING SYMBOL, SADDLE SYMBOL, TREE SYMBOL, WALLET SYMBOL, MONEY BAG SYMBOL, \$20.00, \$25.00, \$50.00, \$75.00, \$100, \$150, \$200, \$500, \$1,000, \$10,000 and \$1,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:



Figure 1: GAME NO. 2021 – 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
MUSHROOM SYMBOL	MSHRM
DRUM SYMBOL	DRUM
NEST SYMBOL	NEST
TROPHY SYMBOL	TROPHY
MOON SYMBOL	MOON
\$25 BURST SYMBOL	WIN\$25
RAINBOW SYMBOL	RNBOW
ROSE SYMBOL	ROSE
STAR SYMBOL	STAR
UMBRELLA SYMBOL	UMBLLA
CROWN SYMBOL	CROWN
\$50 BURST SYMBOL	WIN\$50
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	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
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
5X SYMBOL	WINX5
10X SYMBOL	WINX10
CHERRY SYMBOL	CHERRY
GOLD BAR SYMBOL	BAR
BANANA SYMBOL	BANANA
DICE SYMBOL	DICE
SPADE SYMBOL	SPADE
PINEAPPLE SYMBOL	PNAPLE
BELL SYMBOL	BELL
SUN SYMBOL	SUN
ANCHOR SYMBOL	ANCHOR
APPLE SYMBOL	APPLE
STACK OF BILLS SYMBOL	BILLS
HORSESHOE SYMBOL	HRSHOE
PEAR SYMBOL	PEAR
LEMON SYMBOL	LEMON
HEART SYMBOL	HEART
STRAWBERRY SYMBOL	STRWBY
SAFE SYMBOL	SAFE
KEY SYMBOL	KEY
POT OF GOLD SYMBOL	GOLD

4 LEAF CLOVER SYMBOL	CLOVER
WISHBONE SYMBOL	WISHBN
LIGHTNING BOLT SYMBOL	BOLT
DIAMOND SYMBOL	WIN
\$\$\$ SYMBOL	WINX3
JOKER SYMBOL	JOKER
ACORN SYMBOL	ACORN
BALL CAP SYMBOL	CAP
BALLOON SYMBOL	BLOON
BIRD SYMBOL	BIRD
BUTTERFLY SYMBOL	BTRFLY
COWBOY BOOT SYMBOL	BOOT
COWBOY HAT SYMBOL	HAT
COW HEAD SYMBOL	COW
DAISY SYMBOL	DAISY
DOLLAR BILL SYMBOL	BILL
FEATHER SYMBOL	FTHER
FIRE & LOGS SYMBOL	FIRE
FISH SYMBOL	FISH
FROG SYMBOL	FROG
ICE CREAM CONE SYMBOL	ICECRM
LADY BUG SYMBOL	LDYBUG
PIGGY BANK SYMBOL	PIGBNK
RING SYMBOL	RING
SADDLE SYMBOL	SADDLE
TREE SYMBOL	TREE
WALLET SYMBOL	WALLET
MONEY BAG SYMBOL	WIN
\$20.00	TWY\$
\$25.00	TWFV\$
\$50.00	FFTY\$
\$75.00	SVFV\$
\$100	ONHN
\$150	ONFF
\$200	TOHN
\$500	FVHN
\$1,000	ONTH
\$10,000	10TH
\$1,000,000	TPPZ

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2021), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 2021-0000001-001.

H. Pack - A Pack of the "\$1,000,000 BIG MONEY" Scratch Ticket Game contains 025 fanfolded, perforated Tickets per Pack in one (1) Ticket per strip. The front of Ticket 001 will be shown on the front of the Pack; the back of Ticket 025 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 025 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "\$1,000,000 BIG MONEY" Scratch Ticket Game No. 2021.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "\$1,000,000 BIG MONEY" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 219 (two hundred nineteen) Play Symbols. FAST \$25: If a player reveals a "\$25 BURST" Play Symbol, the player wins \$25! FAST \$50: If a player reveals a "\$50 BURST" Play Symbol, the player wins \$50! GAME 1: If a player reveals 3 matching prize amounts in any one row, column or diagonal, the player wins that amount. GAME 2: The player must scratch the entire play area to reveal 6 prize amounts. If the player reveals 3 matching prize amounts, the player wins that amount. GAMES 3 and 6: 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 "5X" Play Symbol, the player wins 5 TIMES the PRIZE for that symbol. If a player reveals a "10X" Play Symbol, the player wins 10 TIMES the PRIZE for that symbol. GAMES 4 and 5: If a player reveals 3 matching Play Symbols in the same ROW, the player wins the PRIZE for that ROW. If the player reveals a "DIAMOND" Play Symbol, the player wins the PRIZE for that ROW. If a player reveals a "\$\$\$" Play Symbol, the player wins TRIPLE the PRIZE for that ROW. GAME 7: If a player reveals 2 matching numbers within the same PLAY, the player wins the PRIZE for that PLAY. If a player reveals 3 matching numbers within the same PLAY, the player wins TRIPLE the PRIZE for that PLAY. If a player reveals a "MONEY BAG" Play Symbol, the player wins the PRIZE for that PLAY instantly. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

## 2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 219 (two hundred nineteen) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly 219 (two hundred nineteen) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 219 (two hundred nineteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 219 (two hundred nineteen) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns of either Play Symbols or Prize Symbols.

B. GENERAL: A Ticket will win as indicated by the prize structure.

C. GENERAL: A Ticket can win up to seventy-two (72) times.

D. GENERAL: On winning and Non-Winning Tickets, the top cash prizes of \$10,000 and \$1,000,000 will each appear at least once, except on Tickets winning seventy-two (72) times.

E. FAST \$25: Tickets can only win once in this area.

F. FAST \$25: The "\$25 BURST" (WIN\$25) Play Symbol will never appear on a Non-Winning Ticket.

G. FAST \$50: Tickets can only win once in this area.

H. FAST \$50: The "\$50 BURST" (WIN\$50) Play Symbol will never appear on a Non-Winning Ticket.

I. GAME 1: On Non-Winning Tickets, there will be no more than two (2) matching Prize Symbols.

J. GAME 1: Non-Winning and winning Tickets will not contain four (4) matching Prize Symbols in all four (4) corners.

K. GAME 1: Winning Tickets will only contain one (1) winning combination.

L. GAME 1: Winning Tickets will have three (3) matching Prize Symbols as the winning Prize Symbol in the same row, column or diagonal.

M. GAME 2: Winning Tickets will not contain more than three (3) matching Prize Symbols.

N. GAME 2: Winning Tickets will not contain two (2) sets of three (3) matching Prize Symbols.

O. GAME 2: Non-Winning Tickets will not contain more than two (2) matching Prize Symbols.

P. GAME 3: No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

Q. GAME 3: Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

R. GAME 3: Tickets winning more than one (1) time in this GAME will use as many WINNING NUMBERS Play Symbols as possible to create wins, unless restricted by other parameters, play action or prize structure.

S. GAME 3: Every WINNING NUMBERS Play Symbol in GAME 3 will be different, and GAME 3 will contain different WINNING NUMBERS Play Symbols than GAME 6.

T. GAME 3: YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 20 and \$20, 25 and \$25, 50 and \$50).

U. GAME 3: On all Tickets, a Prize Symbol will not appear more than four (4) times, except as required by the prize structure to create multiple wins.

V. GAME 3: On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

W. GAME 3: The "5X" (WINX5) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

X. GAME 3: The "5X" (WINX5) Play Symbol will never appear more than once on a Ticket.

Y. GAME 3: The "5X" (WINX5) Play Symbol will never appear on a Non-Winning Ticket.

Z. GAME 3: The "5X" (WINX5) Play Symbol will win 5 TIMES the PRIZE for that Play Symbol and will win as per the prize structure.

AA. GAME 3: The "10X" (WINX10) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

BB. GAME 3: The "10X" (WINX10) Play Symbol will never appear more than once on a Ticket.

CC. GAME 3: The "10X" (WINX10) Play Symbol will never appear on a Non-Winning Ticket.

DD. GAME 3: The "10X" (WINX10) Play Symbol will win 10 TIMES the PRIZE for that Play Symbol and will win as per the prize structure.

EE. GAME 4: On all Tickets, non-winning Prize Symbols will all be different.

FF. GAME 4: The play area consists of twenty-four (24) Play Symbols and eight (8) Prize Symbols.

GG. GAME 4: There will never be three (3) matching Play Symbols in a vertical or diagonal line.

HH. GAME 4: No Play Symbol will appear more than three (3) times in this GAME.

II. GAME 4: Consecutive Non-Winning Tickets within a Pack will not have matching ROWS. For instance if the first Ticket contains a Lemon Play Symbol, Banana Play Symbol, and a Cherry Play Symbol in any ROW, then the next Ticket may not contain a Lemon Play Symbol, Banana Play Symbol, or a Cherry Play Symbol in any ROW in any order.

JJ. GAME 4: Non-Winning Tickets will not have matching ROWS. For example if ROW 1 is a Lemon Play Symbol, Banana Play Symbol, and a Cherry Play Symbol, then ROW 2 through ROW 8 will not contain a Lemon Play Symbol, Banana Play Symbol, and a Cherry Play Symbol in any order.

KK. GAME 4: Winning Tickets will contain three (3) matching Play Symbols in a horizontal ROW, two (2) matching Play Symbols and a "DIAMOND" (WIN) Play Symbol in a horizontal row or two (2) matching Play Symbols and a "\$\$\$" (WINX3) Play Symbol in a horizontal row.

LL. GAME 4: The "DIAMOND" (WIN) Play Symbol will only appear on Tickets winning a PRIZE.

MM. GAME 4: The "\$\$\$" (WINX3) Play Symbol will only appear on Tickets winning TRIPLE the PRIZE.

- NN. GAME 4: The "DIAMOND" (WIN) Play Symbol with two (2) matching Play Symbols will win the PRIZE for that ROW.
- OO. GAME 4: The "\$\$\$" (WINX3) Play Symbol with two (2) matching Play Symbols will win TRIPLE the PRIZE for that ROW.
- PP. GAME 4: The "\$\$\$" (WINX3) Play Symbol and the "DIAMOND" (WIN) Play Symbol will never appear in the same ROW.
- QQ. GAME 4: The "DIAMOND" (WIN) Play Symbol can only appear once in a ROW.
- RR. GAME 4: The "\$\$\$" (WINX3) Play Symbol can only appear once in a ROW.
- SS. GAME 4: A "DIAMOND" (WIN) Play Symbol will never appear more than once in this GAME.
- TT. GAME 4: A "\$\$\$" (WINX3) Play Symbol will never appear more than once in this GAME.
- UU. GAME 5: On all Tickets, non-winning Prize Symbols will all be different.
- VV. GAME 5: The play area consists of twenty-four (24) Play Symbols and eight (8) Prize Symbols.
- WW. GAME 5: There will never be three (3) matching Play Symbols in a vertical or diagonal line.
- XX. GAME 5: No Play Symbol will appear more than three (3) times in this GAME.
- YY. GAME 5: Consecutive Non-Winning Tickets within a Pack will not have matching ROWS. For instance if the first Ticket contains a Joker Play Symbol, Acorn Play Symbol, and a Ball Cap Play Symbol in any ROW, then the next Ticket may not contain a Joker Play Symbol, Acorn Play Symbol, or a Ball Cap Play Symbol in any ROW in any order.
- ZZ. GAME 5: Non-Winning Tickets will not have matching ROWS. For example if ROW 1 is a Joker Play Symbol, Acorn Play Symbol, and a Ball Cap Play Symbol, then ROW 2 through ROW 8 will not contain a Joker Play Symbol, Acorn Play Symbol, and a Ball Cap Play Symbol in any order.
- AAA. GAME 5: Winning Tickets will contain three (3) matching Play Symbols in a horizontal ROW, two (2) matching Play Symbols and a "DIAMOND" (WIN) Play Symbol in a horizontal ROW or two (2) matching Play Symbols and a "\$\$\$" (WINX3) Play Symbol in a horizontal ROW.
- BBB. GAME 5: The "DIAMOND" (WIN) Play Symbol will only appear on Tickets winning a PRIZE.
- CCC. GAME 5: The "\$\$\$" (WINX3) Play Symbol will only appear on Tickets winning TRIPLE the PRIZE.
- DDD. GAME 5: The "DIAMOND" (WIN) Play Symbol with two (2) matching Play Symbols will win the PRIZE for that ROW.
- EEE. GAME 5: The "\$\$\$" (WINX3) Play Symbol with two (2) matching Play Symbols will win TRIPLE the PRIZE for that ROW.
- FFF. GAME 5: The "\$\$\$" (WINX3) Play Symbol and the "DIAMOND" (WIN) Play Symbol will never appear in the same ROW.
- GGG. GAME 5: The "DIAMOND" (WIN) Play Symbol can only appear once in a ROW.
- HHH. GAME 5: The "\$\$\$" (WINX3) Play Symbol can only appear once in a ROW.
- III. GAME 5: A "DIAMOND" (WIN) Play Symbol will never appear more than once in this GAME.
- JJJ. GAME 5: A "\$\$\$" (WINX3) Play Symbol will never appear more than once in this GAME.
- KKK. GAME 6: No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.
- LLL. GAME 6: Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.
- MMM. GAME 6: Tickets winning more than one (1) time in this GAME will use as many WINNING NUMBERS Play Symbols as possible to create wins, unless restricted by other parameters, play action or prize structure.
- NNN. GAME 6: Every WINNING NUMBERS Play Symbol in GAME 6 will be different, and GAME 6 will contain different WINNING NUMBERS Play Symbols than GAME 3.
- OOO. GAME 6: YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 20 and \$20, 25 and \$25, 50 and \$50).
- PPP. GAME 6: On all Tickets, a Prize Symbol will not appear more than four (4) times, except as required by the prize structure to create multiple wins.
- QQQ. GAME 6: On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.
- RRR. GAME 6: The "5X" (WINX5) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.
- SSS. GAME 6: The "5X" (WINX5) Play Symbol will never appear more than once on a Ticket.
- TTT. GAME 6: The "5X" (WINX5) Play Symbol will never appear on a Non-Winning Ticket.
- UUU. GAME 6: The "5X" (WINX5) Play Symbol will win 5 TIMES the PRIZE for that Play Symbol and will win as per the prize structure.
- VVV. GAME 6: The "10X" (WINX10) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.
- WWW. GAME 6: The "10X" (WINX10) Play Symbol will never appear more than once on a Ticket.
- XXX. GAME 6: The "10X" (WINX10) Play Symbol will never appear on a Non-Winning Ticket.
- YYY. GAME 6: The "10X" (WINX10) Play Symbol will win 10 TIMES the PRIZE for that Play Symbol and will win as per the prize structure.
- ZZZ. GAME 7: On winning Tickets, a non-winning Prize Symbol will not match a winning Prize Symbol.
- AAAA. GAME 7: On all Tickets, a Prize Symbol will not appear more than three (3) times.
- BBBB. GAME 7: The play area consists of thirty-six (36) Play Symbols and twelve (12) Prize Symbols.
- CCCC. GAME 7: Non-winning Play Symbols within a PLAY will be different.
- DDDD. GAME 7: Consecutive Non-Winning Tickets within a Pack will not have matching PLAYS. For instance if the first Ticket contains a 05 Play Symbol, 08 Play Symbol and a 12 Play Symbol in any PLAY, then the next Ticket may not contain a 05 Play Symbol, 08 Play Symbol and a 12 Play Symbol, in any PLAY in any order.
- EEEE. GAME 7: Non-Winning Tickets will not have matching PLAYS. For example if PLAY 1 is the 05 Play Symbol, 08 Play Symbol and 12 Play Symbol, then PLAY 2 through PLAY 12 will not

contain the 05 Play Symbol, 08 Play Symbol and a 12 Play Symbol in any order.

FFFF. GAME 7: The "MONEY BAG" (WIN) Play Symbol will not appear on Non-Winning Tickets.

GGGG. GAME 7: Winning Tickets will contain two (2) matching Play Symbols in the same PLAY, three (3) matching Play Symbols in the same PLAY and/or one (1) "MONEY BAG" (WIN) Play Symbol in the same PLAY.

HHHH. GAME 7: Two (2) matching Play Symbols in the same PLAY will win the PRIZE for that PLAY and will win as per the prize structure.

IIII. GAME 7: Three (3) matching Play Symbols in the same PLAY will win TRIPLE the PRIZE for that PLAY and will win as per the prize structure.

JJJJ. GAME 7: A "MONEY BAG" (WIN) Play Symbol will win the PRIZE for that PLAY and will win as per the prize structure.

KKKK. GAME 7: The "MONEY BAG" (WIN) Play Symbol can only appear once in a PLAY.

LLLL. GAME 7: When a Ticket wins with the "MONEY BAG" (WIN) Play Symbol, the other two (2) Play Symbols in the PLAY with the winning "MONEY BAG" (WIN) Play Symbol will be different.

MMMM. GAME 7: A "MONEY BAG" (WIN) Play Symbol will never appear more than once in this GAME.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "\$1,000,000 BIG MONEY" Scratch Ticket Game prize of \$20.00, \$25.00, \$50.00, \$75.00, \$100, \$150, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$50.00, \$75.00, \$100, \$150, \$200 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$1,000,000 BIG MONEY" Scratch Ticket Game prize of \$1,000, \$10,000 or \$1,000,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$1,000,000 BIG MONEY" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In

the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

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 Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "\$1,000,000 BIG MONEY" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "\$1,000,000 BIG MONEY" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 9,000,000 Scratch Tickets in Scratch Ticket Game No. 2021. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2021 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$20	600,000	15.00
\$25	600,000	15.00
\$50	900,000	10.00
\$75	193,125	46.60
\$100	202,500	44.44
\$150	90,375	99.59
\$200	18,750	480.00
\$500	9,450	952.38
\$1,000	51	176,470.59
\$10,000	20	450,000.00
\$1,000,000	6	1,500,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.44. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2021 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2021, 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-201703404

Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: August 29, 2017

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**Public Utility Commission of Texas**

Notice of Application for Approval of a Service Area Contract and to Amend Water Certificates of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application for approval of an agreement that would amend water certificates of convenience and necessity (CCNs) in Guadalupe County.

Docket Style and Number: Application of City of Cibolo and Green Valley Special Utility District for Approval of a Service Area Contract



Under Texas Water Code §13.248 and to Amend Certificates of Convenience and Necessity in Guadalupe County, Docket Number 47543.

The Application: Cibolo holds water CCN No. 11903 and Green Valley SUD holds water CCN No. 10646. Cibolo and Green Valley SUD have agreed to alter the boundaries of their respective CCNs and transfer the Babcock Property and RLDL Property from within the boundary of Green Valley's CCN to Cibolo's CCN boundary.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 47543.

TRD-201703424  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 30, 2017



#### Notice of Application to Amend a Service Provider Certificate of Operating Authority

On August 21, 2017, Airbus DS Communications, Inc. and Motorola Solutions, Inc. filed a joint application with the Public Utility Commission of Texas to amend service provider certificate of operating authority No. 60962, to reflect a change in ownership and control.

Docket Style and Number: Application of Airbus DS Communications, Inc. and Motorola Solutions, Inc. for an Amendment to Service Provider Certificate of Operating Authority, Docket Number 47528.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 no later than September 15, 2017. 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 47528.

TRD-201703326  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 24, 2017



#### Notice of Application to Amend a Water Certificate of Convenience and Necessity

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) to amend a water certificate of convenience and necessity (CCN) in Hays County.

Docket Style and Number: Remand of TCEQ Application No. 37683-C (Petition from Texas General Land Office for Expedited Release from Certificate of Convenience and Necessity (CCN) No. 10293 held by Maxwell Water Supply Corporation in Hays County, Texas), Docket Number 47523.

The Application: Maxwell Water Supply Corporation filed a petition for approval of a contract to recertify service area back to Maxwell WSC in accordance with a settlement agreement reached by the parties

in an Agreed Order issued by the 201st District Court of Travis County, Texas, returning Texas Commission on Environment Quality (TCEQ) Application No. 37683-C, to the Public Utility Commission of Texas for remand proceedings consistent with the Court's Order. The total area being requested includes approximately 100 acres and zero customers.

Persons wishing to intervene or comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 47523.

TRD-201703389  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 29, 2017



#### Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on August 22, 2017 to relinquish a service provider certificate of operating authority.

Style and Docket Number: Application of Tri Telecom LLC to Relinquish a Service Provider Certificate of Operating Authority, Docket Number 47534.

Application: Tri Telecom LLC seeks to relinquish service provider certificate of operating authority number 60747.

Persons wishing to comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 no later than September 16, 2017. Hearing and speech impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 47534.

TRD-201703329  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 24, 2017



#### Public Notice of Workshop

Staff of the Public Utility Commission of Texas will conduct a workshop on Thursday, October 12, 2017, regarding Project No. 47343, *Rulemaking to Amend Chapter 25 Substantive Rules Relating to the Elimination of the System Benefit Fund*. The workshop will begin at 9:30 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas. A workshop agenda will be posted by October 5, 2017, under Project No. 47343.

Questions concerning the workshop or this notice should be referred to Kristin Abbott, Competitive Markets Division, at (512) 936-7459 or at [kristin.abbott@puc.texas.gov](mailto:kristin.abbott@puc.texas.gov). This proceeding will be livestreamed and archived by AdminMonitor at <http://www.texasadmin.com/tx/puct/>. Hearing and speech-impaired individuals with text

telephones (TTY) may contact the commission through Relay Texas by dialing 711.

TRD-201703399  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 29, 2017

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**Office of the Secretary of State**

**Public Hearing**

The Office of the Secretary of State ("SOS") will hold a public hearing in response to stakeholder requests, to accept public comments on the proposed amendments to 1 TAC §81.62, concerning the requirement for a continuous feed printer dedicated to a real-time audit log to be included with a central accumulator.

The public hearing will be conducted from 9:00 a.m. to 11:00 a.m. on September 18, 2016, at the State Office of Administrative Hearings, Room 103, 300 West 15th Street, Austin, Texas 78701-1649. The public hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Comment time for each individual will be determined by the total number of persons registered to speak in the time allotted. If time permits, comments will be limited to 2 minutes per speaker but may be further limited by SOS if more registrants need to be accommodated.

SOS is not extending the public comment period for these proposed amendments, which were published in the July 28, 2017, issue of the *Texas Register* (42 TexReg 3716), however, SOS will regard the comments received at the public hearing as part of the formal public comments received for the proposed amendments.

For additional information, contact Lindsey Aston, P.O. Box 12697, Austin, Texas 78711-2697, (512) 463-5770, or [generalcounsel@sos.texas.gov](mailto:generalcounsel@sos.texas.gov). Persons with disabilities who plan to attend this meeting and require auxiliary aids or services are asked to contact Ms. Aston at (512) 463-5770, 72 hours prior to the meeting so that appropriate arrangements may be made.

TRD-201703432  
Lindsey Aston  
General Counsel  
Office of the Secretary of State  
Filed: August 30, 2017

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**Texas Department of Transportation**

**Public Hearing Notice - Statewide Transportation Improvement Program**

The Texas Department of Transportation (department) will hold a public hearing on Tuesday, September 26, 2017 at 10:00 a.m. at 118 East Riverside Drive, First Floor, Room 1B.1.A in Austin, Texas to receive public comments on the August 2017 Quarterly Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2017-2020.

The STIP reflects the federally funded transportation projects in the FY 2017-2020 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Dallas-Fort Worth, El Paso, and Houston. The STIP also con-

tains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP and STIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.). Section 134 requires an MPO to develop its TIP in cooperation with the state and affected public transit operators and to provide an opportunity for interested parties to participate in the development of the program. Section 135 requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

A copy of the proposed August 2017 Quarterly Revisions to the FY 2017-2020 STIP will be available for review, at the time the notice of hearing is published, at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, or (512) 486-5033, and on the department's website at: <http://www.txdot.gov/government/programs/stips.html>.

Persons wishing to speak at the hearing may register in advance by notifying Lori Morel, Transportation Planning and Programming Division, at (512) 486-5033 not later than Monday, September 25, 2017, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Transportation Planning and Programming Division, at 118 East Riverside Drive Austin, Texas 78704-1205, (512) 486-5053. Requests should be made no later than Monday, September 25, 2017. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to attend the hearing may submit comments regarding the proposed August 2017 Quarterly Revisions to the FY 2017-2020 STIP to Peter Smith, P.E., Director of Transportation Planning and Programming, P.O. Box 149217, Austin, Texas 78714-9217. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by 4:00 p.m. on Monday, October 9, 2017.

TRD-201703303  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: August 24, 2017

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**Workforce Solutions Brazos Valley Board**

**Public Notice - Invitation to Apply to be on Vendors List**

The Workforce Solutions Brazos Valley Board (WSBVB) routinely issues requests for information (RFIs), requests for proposals (RFPs), and request for quotes (RFQs) to secure contractors to provide opera-

tional, administrative, child care, adult education, and workforce development services for the Brazos Valley region.

The WSBVB maintains a Vendors List of all potential vendors who have contacted the WSBVB and requested to be included on the list. The WSBVB is committed to improving the workforce development system in the seven county region (Brazos, Burleson, Grimes, Leon, Madison, Robertson, and Washington counties) by increasing the availability and quality of workforce programs and services.

If you are on the Vendors List, you will be contacted once a year to ensure your contact information is accurate. If you do not respond to the yearly contact, you will be dropped from the Vendors List.

If you wish to be included on the Vendors List, complete the Vendor Application on [www.bvjobs.org](http://www.bvjobs.org) and return it to **Vicki Wilkins** by mail at P.O. Drawer 4128, Bryan, Texas 77805 or by email at **Vicki.Wilkins@bvcog.org**. The following vendor categories are included on the questionnaire:

- Direct Delivery of Services

- Training
- Quality Control Monitors
- Marketing / Outreach Services
- Supportive Services
- Vendor Services

Additional questions should be directed to **Vicki Wilkins** at (979) 595-2801, extension 2011.

\*To bid on a RFP/RFQ you are not required to be on the Vendors List. The list serves as a way to provide vendors a personal alert to new and upcoming RFP/RFQ releases.

TRD-201703405

Patricia Buck

Program Manager

Workforce Solutions Brazos Valley Board

Filed: August 29, 2017

## How to Use the Texas Register

**Information Available:** The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Review of Agency Rules** - notices of state agency rules review.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 40 (2015) is cited as follows: 40 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 "40 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 40 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to Update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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