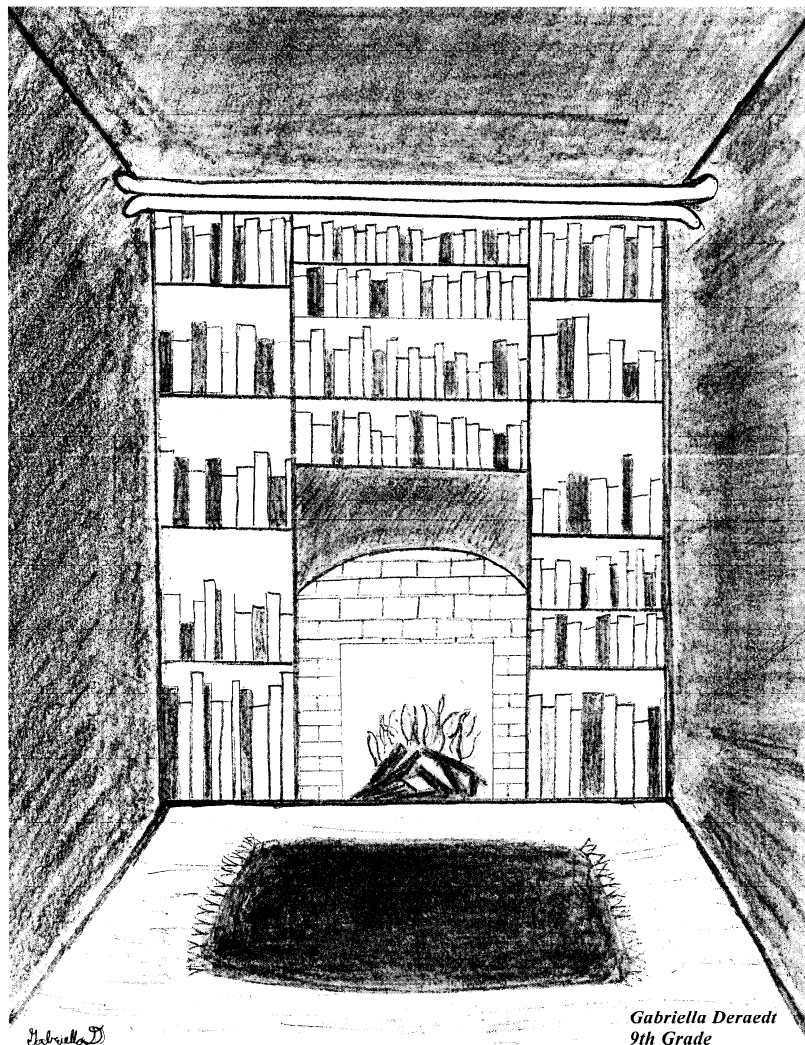

TEXAS REGISTER

Volume 42 Number 49

December 8, 2017

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Gabriella Deraedt
9th Grade

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.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *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

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

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

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

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

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

Additional information about state government may be found here:

<http://www.texas.gov>

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

THE GOVERNOR

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

Appointments

Appointments for November 10, 2017

Appointed to the P-TECH Advisory Council, for a term to expire at the pleasure of the Governor, Charles S. Cook of Flower Mound of Austin.

Appointed to the P-TECH Advisory Council, for a term to expire at the pleasure of the Governor, Angela I. Farley of Dallas.

Appointed to the P-TECH Advisory Council, for a term to expire at the pleasure of the Governor, Jose M. Gomez of El Paso.

Appointed to the P-TECH Advisory Council, for a term to expire at the pleasure of the Governor, Michael L. Reeser of Crawford.

Appointments for November 14, 2017

Appointed to the Public Utility Commission for a term to expire September 1, 2023, Arthur C. D'Andrea of Austin (replacing Kenneth W. Anderson, Jr. of Dallas whose term expired).

Appointed to the Texas Commission on Public School Finance for a term to expire at the pleasure of the Governor, Scott A. Brister of Georgetown.

Appointed to the Texas Commission on Public School Finance for a term to expire at the pleasure of the Governor, Melissa C. Martin of Deer Park.

Appointed to the Texas Commission on Public School Finance for a term to expire at the pleasure of the Governor, Elvira Reyna of Little Elm.

Appointed to the Texas Commission on Public School Finance for a term to expire at the pleasure of the Governor, Todd A. Williams of Dallas.

Appointments for November 15, 2017

Appointed to the Stephen F. Austin State University Board of Regents for a term to expire January 31, 2019, Kenton E. Schaefer of Brownsville (replacing Barry E. Nelson of Dallas who is deceased).

Appointed to the Stephen F. Austin State University Board of Regents for a term to expire January 31, 2023, Karen G. Gantt of McKinney (replacing Ralph Clifford Todd of Carthage whose term expired).

Appointed to the Stephen F. Austin State University Board of Regents for a term to expire January 31, 2023, Brigettee Carnes Henderson of Lufkin (Ms. Henderson is being reappointed).

Appointed to the Stephen F. Austin State University Board of Regents for a term to expire January 31, 2023, Michael T. Mason of Dallas (replacing Kenton E. Schaefer of Brownsville whose term expired).

Appointed to the Teacher Retirement System of Texas Board of Trustees for a term to expire August 31, 2023, Jarvis V. Hollingsworth of Missouri City (replacing R. David Kelly of Plano whose term expired). Mr. Hollingsworth will also serve as Presiding Officer.

Appointed to the Teacher Retirement System of Texas Board of Trustees for a term to expire August 31, 2023, James D. Nance of

Hallettsville (replacing Anita Ann Smith Palmer of Jacksboro whose term expired).

Appointed to the Teacher Retirement System of Texas Board of Trustees for a term to expire August 31, 2023, Frances Sissney of Whitesboro (replacing Thelma Charleston of Houston whose term expired).

Appointments for November 16, 2017

Appointed to the State Independent Living Council for a term to expire October 24, 2018, Leah K. Beltran of Abilene (replacing Richard Couder of El Paso who resigned).

Appointed to the State Independent Living Council for a term to expire October 24, 2019, Thomas M. Bates of Monahans (replacing Karen Swearingen of Rowlett whose term expired).

Appointed to the State Independent Living Council for a term to expire October 24, 2019, Colton J. Read of New Braunfels (Mr. Read is being reappointed).

Appointed to the State Independent Living Council for a term to expire October 24, 2020, April Pollreisz of Amarillo (replacing Jimmy D. Batchelor of Cooper whose term expired).

Appointed to the State Independent Living Council for a term to expire October 24, 2020, Wendy Wilkinson of Houston (replacing Lynne R. Richardson of Austin whose term expired).

Appointed as Ex Officio Non-voting Member to the State Independent Living Council for a term to expire October 24, 2019, Keisha Rowe Nunn of Pflugerville (replacing Teresa Richard of Austin whose term expired).

Appointed as Ex Officio Non-voting Member to the State Independent Living Council for a term to expire October 24, 2020, Debra A. Lyon of Austin (replacing Martha Bagley of Austin whose term expired).

Appointed as Ex Officio Non-voting Member to the State Independent Living Council for a term to expire October 24, 2020, Jonas E. Schwartz of Austin (Mr. Schwartz is being reappointed).

Appointments for November 17, 2017

Appointed to the Coastal Water Authority Board of Directors for a term to expire April 1, 2019, Thomas A. Reiser of Houston.

Appointed to the Coastal Water Authority Board of Directors for a term to expire April 1, 2019, Douglas E. Walker of Beach City.

Appointments for November 20, 2017

Appointed to the State Board of Dental Examiners for a term to expire February 1, 2019, Kimberly N. Haynes, D.M.D. of College Station.

Appointed to the State Board of Dental Examiners for a term to expire February 1, 2019, Lois M. Palermo of League City.

Appointed to the State Board of Dental Examiners for a term to expire February 1, 2019, David H. Yu, D.D.S. of Austin.

Appointed to the State Board of Dental Examiners for a term to expire February 1, 2021, Robert G. McNeill, D.D.S., M.D. of Dallas.

Appointed to the State Board of Dental Examiners for a term to expire February 1, 2021, Margo Y. Melchor, Ed.D. of Houston.

Appointed to the State Board of Dental Examiners for a term to expire February 1, 2021, Michael D. Tillman, D.D.S. of Aledo. Dr. Tillman will also serve as Presiding Officer.

Appointed to the State Board of Dental Examiners for a term to expire February 1, 2023, Bryan N. Henderson, II, D.D.S. of Dallas.

Appointed to the State Board of Dental Examiners for a term to expire February 1, 2023, Lorie L. Jones of Magnolia.

Appointed to the State Board of Dental Examiners for a term to expire February 1, 2023, Jorge E. Quirch, D.D.S. of Missouri City.

Greg Abbott, Governor

TRD-201704749



Appointments

Appointments for November 21, 2017

Appointed to the State Cemetery Committee, for a term to expire February 1, 2023, James L. Bayless, Jr. of Austin (Mr. Bayless is being reappointed).

Greg Abbott, Governor

TRD-201704818



Proclamation 41-3567

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

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

WHEREAS, on September 20, 2017, and October 20, 2017, I issued proclamations renewing the disaster declaration for all counties listed above; and

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

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

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 19th day of November, 2017.

Greg Abbott, Governor

TRD-201704735



THE ATTORNEY GENERAL

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

An index to the full text of these documents is available from
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

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

Requests for Opinions

RQ-0193-KP

Requestor:

Tim F. Branaman, Ph.D.

Chair, Texas State Board of Examiners of Psychologists

333 Guadalupe, Suite 2-450

Austin, Texas 78701

Re: Whether a licensed psychologist may submit a bill to a third-party payer under the licensed psychologist's name without indicating that the psychological services rendered were provided by a supervisee (RQ-0193-KP)

Briefs requested by December 15, 2017

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

TRD-201704766

Amanda Crawford

General Counsel

Office of the Attorney General

Filed: November 21, 2017



RQ-0194-KP

Requestor:

Mr. Joe Garcia, Executive Director

Texas Department of Housing and Community Affairs

Manufactured Housing Division

Post Office Box 12489

Austin, Texas 78711-2489

Re: Whether the authority granted by section 1201.461 of the Occupations Code to a manufactured home retailer to remove the label of a salvaged manufactured home is preempted by federal law (RQ-0194-KP)

Briefs requested by December 29, 2017

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

TRD-201704857

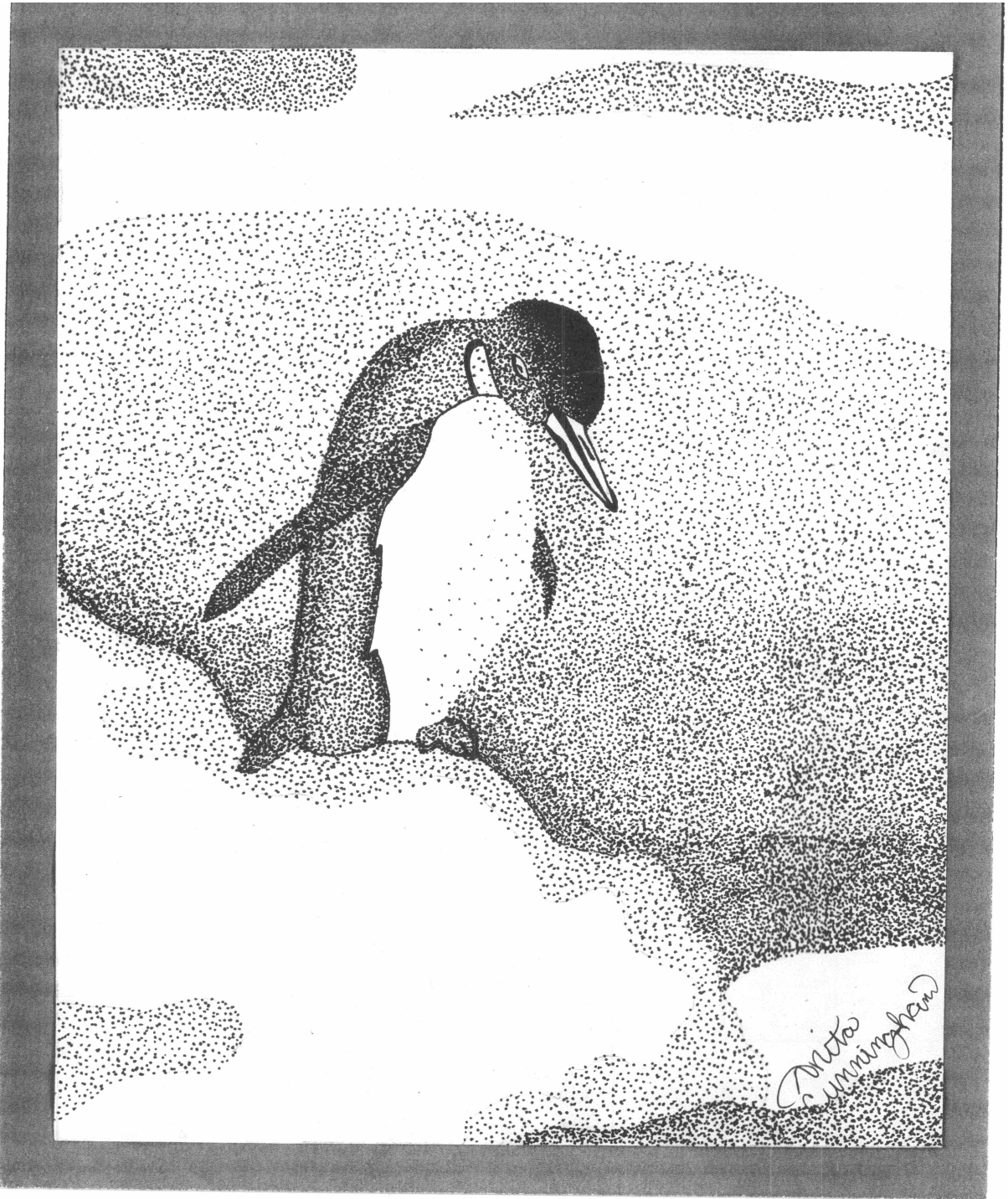
Amanda Crawford

General Counsel

Office of the Attorney General

Filed: November 29, 2017





Mitch
Cunningham

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 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER J. COSTS, RATES AND TARIFFS

DIVISION 1. RETAIL RATES

16 TAC §25.247

The Public Utility Commission of Texas (commission) proposes new §25.247, relating to rate review schedule. The proposed new rule will establish a schedule requiring periodic filings for rate proceedings by investor-owned electric utilities operating solely inside the Electric Reliability Council of Texas (ERCOT), as required by Senate Bill 735 (SB 735) of the 85th Legislature, Regular Session in 2017. Project Number 47545 is assigned to this proceeding.

Darryl Tietjen, Director of the Rate Regulation Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Tietjen has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of adopting the section will be to bring the commission's rules into compliance with the provisions of SB 735 requiring the establishment of regularly scheduled commission reviews of the rates charged by electric investor-owned utilities operating in ERCOT.

Mr. Tietjen has also determined that for each year of the first five years the proposed rule is in effect: (1) no new or current government programs will be created or eliminated; (2) no employee positions will be created, nor will any existing commission staff positions be eliminated; and (3) there will not be an increase or decrease in future legislative appropriations to the commission.

Additionally, Mr. Tietjen has determined that for the first five years the proposed rules are in effect: (4) there will be no increase or decrease in fees paid to the commission; (5) there will be no new regulations created by the proposal; (6) the proposed rule does not expand, limit, or repeal an existing regulation; (7) there will be no increase or decrease to the number of individuals subject to the rule's applicability, and (8) the proposal will not adversely affect the state's economy.

There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Tietjen has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under the Administrative Procedure Act (APA), Tex. Gov't Code Ann. §2001.022 (West 2016).

The commission staff will conduct a public hearing on this rule-making, if requested in accordance with the APA, Tex. Gov't Code Ann. §2001.029 (West 2016), at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on January 23, 2018. The request for a public hearing must be received within 30 days after publication.

Initial comments on the proposed new section may be filed with the Commission's filing clerk at 1701 North Congress Avenue, Austin, Texas or mailed to P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Sixteen copies of such comments are required by 16 TAC §22.71(c) to be submitted when filed. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 47545.

This new section is proposed under Public Utility Regulatory Act (PURA), Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, PURA §36.157, which requires the commission to establish by rule a schedule requiring electric utilities to make periodic filings with the commission to modify or review base rates charged by the electric utility.

Cross reference to statutes: Public Utility Regulatory Act, §14.002 and §36.157.

§25.247. Rate Review Schedule.

(a) Application. This section applies only to an electric utility, other than a river authority, that operates solely inside the Electric Reliability Council of Texas (ERCOT).

(b) Filing requirements.

(1) Each electric utility in the ERCOT region must file for a comprehensive rate review within 48 months of the order setting rates in its most recent comprehensive rate proceeding or other proceeding

in which the commission approved a settlement agreement reflecting a rate modification that allowed the electric utility to avoid the filing of such a rate case. If the date of such commission order falls within the period October 1 through April 30, the electric utility may, in order to use a calendar-year test year, extend the date of the required filing to the first business day in May after the fourth anniversary of the order. For a transmission and distribution utility, the filing must include information necessary for the review of both transmission and distribution rates.

(2) On a year-to-year basis, the commission shall issue an order extending the filing requirements under paragraph (1) of this subsection by one year if the following conditions are met:

(A) for an electric utility providing transmission-only service, the utility's most recently accepted earnings monitoring report, filed in compliance with commission rules and instructions or as adjusted by the commission to conform with the rules and instructions, shows that it is earning, on a weather-normalized basis, less than 50 basis points above the average of the most recent commission-approved rate of return on equity for each transmission-only utility operating in ERCOT; or

(B) for a transmission and distribution utility, the utility's most recently accepted earnings monitoring report, filed in compliance with commission rules and instructions or as adjusted by the commission to conform with the rules and instructions, shows that it is earning, on a weather-normalized basis, less than 50 basis points above the average of the most recent commission-approved rate of return on equity for each transmission and distribution utility operating in ERCOT with at least 175,000 metered customers.

(C) For purposes of this subsection, all utility earnings monitoring reports evaluated in earnings-report memoranda filed by commission staff are deemed accepted on the date that such memoranda are filed with the commission, unless a memorandum states explicitly otherwise or, with regard to the acceptance of the report for a specific electric utility, the commission modifies staff's conclusions pertaining to that electric utility. If necessary to achieve the purposes of this rule, commission staff may at any time issue an individual notice of acceptance for an electric utility's earnings monitoring report by filing a memorandum with the commission.

(3) The commission may extend the scheduled filing deadline under paragraphs (1) and (2) of this subsection for one year for good cause shown or because of resource constraints of the commission.

(4) An electric utility qualifying for an extension under paragraph (2) of this subsection shall submit notice in the same project as the filing of its most recent earnings monitoring report at least 180 days before the fourth anniversary of the order in its most recent comprehensive rate proceeding or other proceeding in which the commission approved a settlement agreement reflecting a rate modification that allowed the electric utility to avoid the filing of such a rate case.

(5) Nothing in this section limits the commission's authority to initiate a rate proceeding at any time under this title on the basis of other criteria that the commission determines are in the public interest, including but not limited to the information provided in an electric utility's earnings monitoring report.

(c) Transition issues for electric utilities.

(1) If an electric utility subject to subsection (a) of this section has a comprehensive rate proceeding pending on the effective date of this rule, the electric utility is required to file, after the commission's final order in that pending proceeding, a comprehensive rate proceeding in accordance with subsection (b)(1) of this section. If the pending

proceeding is withdrawn, dismissed, or otherwise resolved without a final order, the electric utility shall be subject to the transition timelines in paragraph (2) of this subsection unless the commission orders otherwise.

(2) All electric utilities subject to subsection (a) of this section shall make their initial filings under that subsection on or before the later of:

(A) 48 months from the order in the electric utility's last comprehensive rate proceeding or other proceeding in which the commission approved a settlement agreement reflecting a rate modification that allowed the electric utility to avoid the filing of such a rate case, or such date as extended by the provisions of subsection (b)(1) of this section; or

(B) the following dates:

Figure: 16 TAC §25.247(c)(2)(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.

Filed with the Office of the Secretary of State on November 17, 2017.

TRD-201704706

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: January 7, 2018

For further information, please call: (512) 936-7223



PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 84. DRIVER EDUCATION AND SAFETY

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 84, Subchapter A, §84.2; Subchapter C, §84.41 and §84.44; Subchapter D, §84.51; Subchapter E, §84.62; Subchapter F, §84.70; Subchapter M, §§84.500, 84.502 and 84.503; and Subchapter N, §84.600, regarding the Driver Education and Safety Program.

JUSTIFICATION AND EXPLANATION OF THE RULES

The rules under 16 TAC, Chapter 84 implement Texas Education Code, Chapter 1001. These proposed amendments primarily implement Senate Bill 848 (SB 848), House Bill 912 (HB 912), and House Bill 1372 (HB 1372), 85th Legislature, Regular Session (2017.) The proposed amendments also replace outdated language and make editorial corrections. The legislation (SB848/HB912) removed outdated language; expanded the population of persons who are authorized to provide instruction in the 'parent taught' driver education program; reduced the driver education course provider bond to \$10,000; and authorized driver education and driving safety course completion certificates to be issued electronically. House Bill 1372 added a requirement that the curriculum for each driver education and safety course include information on the proper use of child passenger safety seats.

In a future rulemaking, the Department will be implementing two remaining bills from the 85th Legislature, Regular Session (2017), that affected the Driver Education and Safety Program, including: Senate Bill 30 relating to traffic stop safety; Senate Bill 1051 relating to creating a driver education course in American Sign Language; and implementing the portion of SB 848 and HB 912 that specifically authorized driving safety schools to issue course completion certificates electronically. The anticipated future rulemaking will also include proposing amendments to the curriculum for driver education and safety courses.

SECTION-BY-SECTION SUMMARY

The proposed amendments to §84.2 remove a definition that was repealed in SB 848 and HB 912 relating to certain qualification for license.

The proposed amendments to §84.41 implement SB 848 and HB 912 authorizing driver education certificates to be issued electronically.

The proposed amendments to §84.44 implement SB 848 and HB 912, removing a burdensome requirement in the driver education and driving safety instructor license renewal process.

The proposed amendments to §84.51 correct an existing typographical error.

The proposed amendments to §84.62 implement SB 848 and HB 912, reducing the driver education course provider bond to \$10,000.

The proposed amendments to §84.70 repeal language that was repealed in SB 848 and HB 912 relating to certain qualifications for license.

The proposed amendments to §84.500 implement HB 1372, adding information relating to child passenger safety seats to driver education school curriculum.

The proposed amendments to §84.502 implement HB 1372, adding information relating to child passenger safety seats to driving safety course curriculum.

The proposed amendments to §84.503 implement HB 1372, adding information regarding the proper use of child passenger safety seats to specialized driving safety courses of instruction.

The proposed amendments to §84.600 implement HB 1372, adding information regarding the proper use of child passenger safety seats to the driver education Program of Instruction for Public Schools.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Brian E. Francis, Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no direct cost to state or local government as a result of enforcing or administering the proposed amendments.

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

The reduction in the bond amount does not have an effect on the Department's revenue, as the bond is used only if a driver education school becomes insolvent and its claims are to refund fees to students.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Francis has also determined that for each year of the first five-year period, the proposed amendments are in effect, the public will benefit from a greater understanding of the rules, and from drivers being aware of the proper use of child passenger safety seats, thus, preventing injuries during accidents. The public should also benefit from the convenience of receiving driver education certificates electronically upon completion of courses.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Francis has determined that for each year of the first five-year period, the proposed amendments are in effect, there are minimal anticipated economic costs to persons who are required to comply with the proposed amendments. There is no fee to the Department as a result of the addition of the proper use of child passenger safety seats into driving safety and driver education curriculum. There may be nominal costs to rewrite the curriculum and resubmit to the Department.

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

There will be no adverse affect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments. A small or micro business may save some costs by the reduction of the driver education course provider bond amount.

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

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

Under Government Code §2001.0045, a state agency may not adopt a proposed rule if the fiscal note states that the rule imposes a cost on regulated persons, including another state agency, a special district, or a local government, unless the state agency: (a) repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule; or (b) amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the rule. There are exceptions for certain types of rules under §2001.0045(c).

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) The proposed rules do not create or eliminate a government program.
- (2) Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
- (4) The proposed rules do not require an increase or decrease in fees paid to the agency.
- (5) The proposed rules do not create a new regulation.
- (6) The proposed rules do not expand, limit, or repeal an existing regulation.
- (7) The proposed rules do not increase or decrease the number of individuals subject to the rule's applicability.
- (8) The proposed rules do not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, Texas Department of Licensing Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032, or electronically to erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §84.2

STATUTORY AUTHORITY

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001.

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

§84.2. Definitions.

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

(1) - (12) (No change.)

~~[(13) Good reputation--A person is considered to be of good reputation if the department determines that the person is eligible for licensure, based on the department's review of the application, any supporting documentation and analysis pursuant to any of the laws and rules that relate to the license requirements, including but not limited to this chapter; 16 Texas Administrative Code Chapter 60; Texas Education Code Chapter 1001; and Texas Occupations Code Chapters 51 and Chapter 53.]~~

(13) [(14)] Inactive course--a driving safety or specialized driving safety course for which no uniform certificates of completion or course completion certificate numbers have been purchased for 36 months or longer.

(14) [(15)] Instructor trainer--A driving safety instructor trainer (DSIT) or specialized driving safety instructor trainer (SDSIT) who has been trained to prepare instructors to give instruction in a specified curriculum. A DSIT or SDSIT supervises the student instructor trainee during their practical teaching sessions, overseeing their presentation of the course. The DSIT or SDSIT may provide feedback and

guidance to the trainee concerning their practical teaching, but would not provide the training of techniques of instruction and in-depth familiarization with course material to the trainee during the Instructor Development Course.

(15) [(16)] National criminal history record information--Criminal history record information obtained from the Federal Bureau of Investigation under Texas Government Code, §411.087, based on fingerprint identification information.

(16) [(17)] New Course--A driving safety or specialized driving safety course is considered new when it has not been approved by the department to be offered previously, or has been approved by the department and become inactive; or the content, lessons, or delivery of the course has been changed to a degree that a new application is requested and a complete review of the application and course presentation is necessary to determine compliance.

(17) [(18)] Personal validation question--A question designed to establish the identity of the student by requiring an answer related to the student's personal information such as a driver's license number, address, date of birth, or other similar information that is unique to the student.

(18) [(19)] Post program exam--an exam designed to measure the student's comprehension and knowledge of course material presented after the instruction is completed.

(19) [(20)] Pre-program exam--an exam given during the program introduction using questions drawn from material to be covered in the course to determine the level of drug and alcohol knowledge possessed by the student prior to receiving instruction.

(20) [(21)] Primary school--A licensed driver education main school that may have branch schools.

(21) [(22)] Public or private school--an accredited public or non-public secondary school.

(22) [(23)] Specialized driving safety course--a six-hour driving safety course that includes at least four hours of training intended to improve the student's knowledge, compliance with, and attitude toward the use of child passenger safety seats systems and the wearing of seat belt and other occupant restraint system.

(23) [(24)] Teacher of record--A licensed supervising driver education teacher or licensed driver education teacher employed at the school who is directly responsible for the classroom instructional phase provided by a teaching assistant full or supervising teaching assistant full.

(24) [(25)] Uniform certificate of course completion--A document with a serial number purchased from the department that is printed, administered and supplied by course providers or primary consignees for issuance to students who successfully complete an approved driving safety or specialized driving safety course and that meets the requirements of Texas Transportation Code, chapter 543, and Texas Code of Criminal Procedure, Article 45.051 or 45.0511. This term encompasses all parts of an original or duplicate uniform certificate of course completion.

(25) [(26)] Validation question--A question designed to establish the student's participation in a course or program and comprehension of the materials by requiring the student to answer a question regarding a fact or concept taught in the course or program.

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

Filed with the Office of the Secretary of State on November 20, 2017.

TRD-201704708

Brian E. Francis
Executive Director

Texas Department of Licensing and Regulation
Earliest possible date of adoption: January 7, 2018
For further information, please call: (512) 463-8179



SUBCHAPTER C. DRIVER EDUCATION SCHOOLS AND INSTRUCTORS

16 TAC §84.41, §84.44

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001.

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

§84.41. *Driver Education School Responsibility.*

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

(c) Each driver education school owner-operator or employee that purchases driver education certificate numbers from the department must:

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

(3) develop and maintain a department-approved method for ~~printing and~~ issuing original and duplicate driver education certificates that, to the greatest extent possible, prevents the unauthorized production or misuse of the certificates; and

(4) (No change.)

§84.44. *Driver Education Instructor License.*

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

(c) An application for renewal of an instructor license shall be submitted on forms prescribed by the department ~~[and shall be post-marked or hand-delivered at least thirty (30) days before the date of expiration or a late instructor renewal fee shall be imposed]~~. A complete application shall include the following:

(1) annual licensing fee; and

(2) evidence of completing continuing education during the individual license renewal period.

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

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

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SUBCHAPTER D. PARENT TAUGHT DRIVER EDUCATION

16 TAC §84.51

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001.

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

§84.51. *Parent Taught Submission of Course for Department Approval.*

(a) - (e) (No change.)

(f) A parent taught driver education course submitted for department review may be denied upon finding:

(1) that the course does not meet the standards required under §1001.112 [~~§1001.212~~] of the Code; or

(2) the materials used were not approved by the department.

(g) (No change.)

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

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SUBCHAPTER E. DRIVING SAFETY SCHOOLS, COURSE PROVIDERS AND INSTRUCTORS

16 TAC §84.62

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001.

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

§84.62. *Course Provider License Requirements.*

(a) (No change.)

(b) Bond requirements for course provider. In the case of an original or a change of owner application, an original bond shall be provided in the amount of \$10,000 [~~\$25,000~~]. In the case of a renewal application, an original bond or a continuation agreement for the approved bond currently on file shall be submitted. The bond or the continuation agreement shall be executed on the form prescribed by the department.

(c) - (k) (No change.)

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

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SUBCHAPTER F. DRUG AND ALCOHOL AWARENESS PROGRAMS AND INSTRUCTORS

16 TAC §84.70

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001.

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

§84.70. *Drug and Alcohol Driving Awareness Program School Licensure Requirements.*

(a) (No change.)

(b) Approval. The department shall approve the application of a drug and alcohol driving awareness school if the department finds that [the school owner and employees are of good reputation and] the school does not owe a civil penalty under Texas Education Code, Chapter 1001.

(c) - (i) (No change.)

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

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SUBCHAPTER M. CURRICULUM AND ALTERNATIVE METHODS OF INSTRUCTION

16 TAC §§84.500, 84.502, 84.503

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001.

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

§84.500. *Courses of Instruction for Driver Education Schools.*

(a) The educational objectives of driver training courses shall include, but not be limited to, promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of driver education and citizens; reducing traffic violations; reducing traffic-related injuries, deaths, and economic losses; the proper use of child passenger safety seat systems; and motivating development of traffic-related

competencies through education, including, but not limited to, Texas traffic laws, risk management, driver attitudes, courtesy skills, and evasive driving techniques.

(b) - (i) (No change.)

§84.502. *Driving Safety Courses of Instruction.*

(a) This section contains requirements for driving safety, continuing education, and instructor development courses. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. Except as provided by §84.504, relating to Driving Safety Course Alternative Delivery Method), all course content shall be delivered under the direct observation of a licensed instructor. Courses of instruction shall not be approved that contain language that a reasonable and prudent individual would consider inappropriate. Any changes and updates to a course shall be submitted by the course provider and approved prior to being offered. Approval will be revoked for any course that meets the definition of inactive as defined in §84.2(16) of this chapter.

(1) Driving safety courses.

(A) Educational objectives. The educational objectives of driving safety courses shall include, but not be limited to promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of drivers and citizens; the proper use of child passenger safety seat systems; reducing traffic violations; reducing traffic-related injuries, deaths, and economic losses; and motivating continuing development of traffic-related competencies.

(B) - (C) (No change.)

(D) Minimum course content. Driving Safety course content, including video and multimedia, shall include current statistical data, references to law, driving procedures, and traffic safety methodology. A driving safety course shall include, as a minimum, materials adequate to assure the student masters the following.

(i) - (ix) (No change.)

(x) Occupant restraints and protective equipment--minimum of 15 minutes (instructional objective--to identify the rationale for having and using occupant restraints and protective equipment). Instruction shall address the following topics:

(I) - (IV) (No change.)

(V) helmets and other protective equipment[;

and] (VI) proper use of child passenger safety seat systems; and

(VII) [~~(VI)~~] dangers involved in locking or leaving children in vehicles unattended.

(xi) - (xiii) (No change.)

(E) - (H) (No change.)

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

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

§84.503. *Specialized Driving Safety Courses of Instruction.*

(a) This section contains requirements for specialized driving safety courses, instructor development courses, and continuing education. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. Except as provided by §84.504 of this title (relating to Driving Safety Course Alternative Delivery Method), all course content shall be delivered under the direct observation of a specialized driving safety licensed instructor. Courses of instruction shall not be approved that con-

tain language that a reasonable and prudent individual would consider inappropriate. Any changes and updates to a course shall be submitted and approved prior to being offered. Approval will be revoked for any course that meets the definition of inactive as defined in §84.2(14).

(1) Specialized driving safety courses.

(A) Educational objectives. The educational objectives of specialized driving safety courses shall include, but not be limited to improving the student's knowledge and use of, compliance with, and attitude toward the use of child passenger safety seat systems and the wearing of seat belt and other occupant restraint systems.

(B) - (G) (No change.)

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

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

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

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Brian E. Francis

Executive Director

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For further information, please call: (512) 463-8179



SUBCHAPTER N. PROGRAM INSTRUCTION FOR PUBLIC SCHOOLS, EDUCATION SERVICE CENTERS, AND COLLEGES OR UNIVERSITIES COURSE REQUIREMENTS

16 TAC §84.600

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001.

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

§84.600. *Program of Organized Instruction.*

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

(c) Course content, minimum instruction requirements, and administrative guidelines for each phase of driver education classroom instruction, in-car training (behind-the-wheel and observation), simulation, and multicar range shall include the instructional objectives established by the commissioner of education, as specified in this subsection, and meet the requirements of this subchapter. Sample instructional modules may be obtained from the department. Schools may use sample instructional modules developed by the department or develop their own instructional modules based on the approved instructional objectives. The instructional objectives are organized into the modules outlined in this subsection and include objectives for classroom and in-car training (behind-the-wheel and observation), simulation lessons, parental involvement activities, and evaluation techniques. In addition, the instructional objectives that must be provided to every student enrolled in a minor and adult driver education course include information relating to litter prevention; anatomical gifts; distractions, including the use of a wireless communication device that includes texting; mo-

torcycle awareness; alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle; and recreational water safety. A student may apply to the Texas Department of Public Safety (DPS) for an instruction permit after completing six hours of instruction as specified in Module One if the student is taking the course in a concurrent program. The minor and adult driver education program instructional objectives shall include:

(1) (No change.)

(2) Module Two: Driver Preparation. The student legally and responsibly performs reduced-risk driving practices in the HTS by:

(A) employing pre-drive tasks;

(B) using and requiring passengers to use occupant protection and restraint systems, including the proper use of child passenger safety seat systems;

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

(3) - (12) (No change.)

(d) - (j) (No change.)

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

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TRD-201704715

Brian E. Francis

Executive Director

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-8179



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER KK. COMMISSIONER'S

RULES ON COUNTY BOARDS OF EDUCATION

19 TAC §61.1301

The Texas Education Agency (TEA) proposes new §61.1301, concerning county boards of education. The proposed new rule would reflect changes made by Senate Bill (SB) 1566 and SB 2065, 85th Texas Legislature, Regular Session, 2017, to collect delinquent taxes from an abolished county board of education.

The 85th Texas Legislature, Regular Session, 2017, passed SB 1566 and SB 2065 that provided the legal authority for the abolition of county boards of education in counties of a certain population size that are directly adjacent to counties of a certain population size. Under current population numbers, the only county board of education affected by the bills was Dallas County Schools. The voters of Dallas County voted, in effect, to abolish Dallas County Schools on November 8, 2017.

SB 1566 and SB 2065 specified that should the voters choose not to continue Dallas County Schools, the abolition of Dallas County Schools would take effect on November 15, 2017. In

both bills the statutory language requires the TEA to adopt a rule regarding the use of delinquent taxes collected from the taxpayers of Dallas County levied by or on behalf of Dallas County Schools prior to its abolition.

Proposed new 19 TAC §61.1301, Delinquent Taxes of County Boards of Education, would establish that delinquent taxes must apply to the bonds levied by or on behalf of the abolished county board of education. Although Dallas County Schools is the only county board of education currently affected by the bills, the proposed new rule would also apply to any such county board of education affected in the future.

The proposed new section would have no procedural or reporting implications. The proposed new section would have no locally maintained paperwork requirements.

FISCAL NOTE. Leo Lopez, associate commissioner for school finance / chief school finance officer, has determined that for the first five-year period the new section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the new section. The county board of education affected by the bill (Dallas County Schools) provides student transportation services for local school districts that the local school districts would need to begin to provide instead. Any state aid that was previously distributed to the county board of education for its services would presumably be retained by the local school districts to be used for transportation services. Therefore, the net fiscal impact to local governments should be minimal. There is no effect on local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022. The proposed new section does not impose a cost on regulated persons and, therefore, is not subject to Texas Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT. The TEA has determined that the proposed new section does not have a government growth impact pursuant to Texas Government Code, §2001.0221.

PUBLIC BENEFIT/COST NOTE. Mr. Lopez has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section will be compliance with current law and proper collection and use of delinquent taxes. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. There is no direct adverse economic impact for small businesses, microbusinesses, and rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins December 8, 2017, and ends January 8, 2018. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to rules@tea.texas.gov. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on December 8, 2017.

STATUTORY AUTHORITY. The new section is proposed under Senate Bill (SB) 1566 and SB 2065, 85th Texas Legislature, Regular Session, 2017, which authorize the commissioner of education to provide by rule the manner by which a county shall collect and use any delinquent taxes imposed by or on behalf of a county board of education or board of county school trustees that has been abolished.

CROSS REFERENCE TO STATUTE. The new section implements Senate Bill (SB) 1566 and SB 2065, 85th Texas Legislature, Regular Session, 2017.

§61.1301. Delinquent Taxes of County Boards of Education. Upon collection of delinquent taxes levied by or on behalf of an abolished county board of education, the county in which the abolished county board of education operated must apply the delinquent taxes to the bonds levied by or on behalf of the abolished county board of education.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER EE. ACCREDITATION

STATUS, STANDARDS, AND SANCTIONS

DIVISION 2. CONTRACTING TO PARTNER TO OPERATE A DISTRICT CAMPUS

19 TAC §97.1075, §97.1079

The Texas Education Agency (TEA) proposes new §97.1075 and §97.1079, concerning contracting to partner to operate a district campus. The proposed new 19 TAC §97.1075 would clarify what it means to partner to operate a campus under Senate Bill (SB) 1882, 85th Texas Legislature, Regular Session, 2017, as well as the minimum standards for a performance contract between a school district and an eligible operating partner. The proposed new 19 TAC §97.1079 would clarify the processes and criteria for districts to receive eligibility approval for school district partnerships under the Texas Education Code (TEC), §11.174(a)(2).

The 85th Texas Legislature, Regular Session, 2017, implemented SB 1882, which authorizes school districts to enter into partnerships for certain entities to operate school district campuses. The legislation contemplates that the campus is operated under independent management of a certain third party entity to ensure the students of the campus receive the benefit of alternative management and educational delivery from the district's normal operation. The legislation makes clear that evaluation of campus performance will continue but provides an exemption from certain interventions for only the

first two school years of operation for the partner entity, which ensures new educational methods have a chance to impact student performance.

SB 1882 specifies that in order to receive the benefits associated with TEC, §11.174, the district must contract with a partner to operate a campus. The proposed new 19 TAC §97.1075 would clarify that to "contract to partner to operate a campus" means the district must confer a set of authorities outlined in the rule and include, at a minimum, a set of provisions in the performance contract. Since the statute will allow for accountability and financial incentives, this proposed new rule would ensure that, at a minimum, the operating partner is given the authorities necessary to operate a campus. This would also ensure the performance contracts, as required in TEC, §12.0531, include a description of the conferred authorities as well as baseline contract provisions to support effective partnerships.

SB 1882 also specifies that the district may, upon approval of the commissioner, receive benefits associated with TEC, §11.174, by contracting with an entity other than an open-enrollment charter school to operate a campus. The proposed new 19 TAC §97.1079 would clarify that eligible entities include institutions of higher education, non-profit organizations, and governmental entities. This proposed new rule would ensure that an institution of higher education that has been granted a charter in accordance with TEC, Chapter 12, Subchapter E, will be considered an open-enrollment charter school for the purposes of TEC, §11.174. This proposed new rule would also clarify the process and criteria for districts to receive eligibility approval for school district partnerships with certain entities.

The proposed new 19 TAC §97.1075 would require school districts, if requested by the commissioner, to submit additional information necessary to determine if the school district partnership meets the qualification outlined in the rule. The proposed new 19 TAC §97.1079 would require school districts, if seeking commissioner approval for eligible entities not granted a charter in accordance with TEC, Chapter 12, Subchapter E, to submit information in accordance with the approval process.

FISCAL NOTE. Joe Siedlecki, associate commissioner for school improvement, innovation, and charters, has determined that for the first five-year period the new sections are in effect, there will be no additional costs for state or local government as a result of enforcing or administering the new sections. There is no effect on local economy for the first five years that the proposed new sections are in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022. The proposed new sections do not impose a cost on regulated persons and, therefore, are not subject to Texas Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT. The TEA has determined that the proposed new sections do not have a government growth impact pursuant to Texas Government Code, §2001.0221.

PUBLIC BENEFIT/COST NOTE. Mr. Siedlecki has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing proposed new §97.1075 would be clarification of what it means to partner to operate a campus under TEC, §11.174, and receive the associated benefits. The public benefit anticipated as a result of enforcing proposed new §97.1079 would be clarification regarding the processes and criteria for districts to receive eligibility approval for school district partnerships with certain enti-

ties. There is no anticipated economic cost to persons who are required to comply with the proposed new sections.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. There is no direct adverse economic impact for small businesses, microbusinesses, and rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins December 8, 2017, and ends January 8, 2018. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to rules@tea.texas.gov. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on December 8, 2017.

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §11.174(a), as added by SB 1882, 85th Texas Legislature, Regular Session, 2017, which authorizes a school district to enter into a partnership to operate a school district campus under certain conditions; TEC, §11.174(e), which requires the commissioner to continue to evaluate campus performance and assign overall and domain ratings for a campus operated under a partnership; TEC, §11.174(f), which prohibits the imposition of certain interventions and sanctions based on accountability performance for the first two school years for which a school district partnership operates on the campus; TEC, §11.174(g), which extends the intervention exemption to a subsequent or renewed partnership only upon approval from the commissioner; TEC, §11.174(m), which authorizes the commissioner to adopt rules to implement the TEC, §11.174; TEC, §42.2511, as added by SB 1882, 85th Texas Legislature, Regular Session, 2017, which provides additional funding in certain circumstances to a school district for students at a campus that is operated by a school district partnership under the TEC, §11.174, if the school district has not appointed a majority of the governing body of the entity. Funding is based on an accrual of time during a school year as provided by the TEC, Chapter 42; and TEC, §42.2511(c), which authorizes the commissioner to adopt rules to implement the TEC, §42.2511.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code (TEC), §11.174 and §42.2511, as added by SB 1882, 85th Texas Legislature, Regular Session, 2017.

§97.1075. Contracting to Partner to Operate a Campus under Texas Education Code, §11.174.

(a) Applicability. This section applies only to an independent school district that intends to contract to partner to operate a campus and receive benefits under Texas Education Code (TEC), §11.174 and §42.2511.

(b) Definitions. For purposes of this division, the following words and terms shall have the following meaning, unless the context clearly indicates otherwise.

(1) Operating partner--Either a state-authorized open-enrollment charter school or an eligible entity as defined by TEC, §12.101(a).

(2) Open-enrollment charter holder--This term has the meaning assigned in TEC, §12.1012(1).

(3) Governing body of a charter holder--This term has the meaning assigned in TEC, §12.1012(2).

(4) Governing body of a charter school--This term has the meaning assigned in TEC, §12.1012(3).

(5) Contract to partner to operate a campus--This term means the partner must operate the campus in accordance with subsection (c) of this section under a performance contract as outlined in subsection (d) of this section.

(6) Campus--This term has the meaning assigned in §97.1051(3) of this title (relating to Definitions).

(c) Conferred authority. In order to qualify as operating a district campus under TEC, §11.174, the district must confer, at a minimum, the following enhanced authorities to the operating partner:

(1) initial and final authority to appoint the chief operating officer;

(2) initial and final authority for the operating partner to employ and manage the chief operating officer and all of its own administrators, educators, contractors, or other staff. Such authority includes hiring, assignment, evaluation, development, advancement, compensation, continuation, and establishment of any other terms of employment, as well as delegation of any and all managerial and operational authority;

(3) initial and final authority to approve the assignment of all district employees or contractors to the campus, as well as initial and final authority to rescind the assignment of any district employee or district contractor from the campus;

(4) initial and final authority to approve all curriculum decisions beyond the minimum requirements outlined in §74.2 of this title (relating to Description of a Required Elementary Curriculum) or §74.3 of this title (relating to Description of a Required Secondary Curriculum), lesson plans, instructional strategies, and instructional materials, as defined in TEC, §31.002(1), to be used at that campus;

(5) initial and final authority over educational programs for specific, identified student groups, such as gifted and talented students, students of limited English proficiency, students at risk of dropping out of school, and other statutorily defined populations;

(6) initial and final authority to set the school calendar and the daily schedule, which may differ from those in other district campuses;

(7) initial and final authority to approve all assessments that are not required by the state of Texas;

(8) initial and final authority over the full campus operational budget by developing the campus budget. The governing body of the operating partner will approve the campus budget; and

(9) control of a majority of the education programs. The commissioner may determine whether the operating partner controls the majority of the education programs based on all the facts and circumstances.

(d) Performance contract. To contract to partner to operate under TEC, §11.174, the independent school district's board of trustees must grant the operating partner a campus charter under TEC, Chapter 12, Subchapter C. The charter must include performance expectations memorialized in a performance contract, as required by TEC, §12.0531. This performance contract must include, at a minimum, the following provisions:

(1) a description of enhanced authorities as outlined in subsection (c) of this section;

(2) annual academic performance expectations and goals, which shall include, but are not limited to:

(A) for campuses that are paired for accountability purposes, specific targets for student academic performance that are set to increase or maintain performance that is above average for the district;

(B) for campuses issued a direct accountability rating, specific targets for the campus accountability rating assigned by the TEA that are set to increase or maintain performance that is above average for the district; and

(C) specific consequences in the event that the operating party does or does not meet the annual academic performance expectations and goals described in the performance contract;

(3) annual financial performance expectations and goals, which shall include, but are not limited to:

(A) the completion of an annual financial report of the operating partner meeting the expectations outlined in §109.23 of this title (relating to School District Independent Audits and Agreed-Upon Procedures);

(B) receipt of an unqualified audit opinion, in connection with the annual financial report required in subparagraph (A) of this paragraph; and

(C) specific consequences in the event that the operating partner does or does not meet the annual financial performance expectations and goals described in the performance contract;

(4) a description of the campus enrollment and expulsion policies;

(5) a contract term of up to ten years as required by TEC, §12.0531, with a provision(s) specifying:

(A) a requirement for a public hearing at least 30 days prior to any district action to terminate the contract for an operating partner that successfully met the performance expectations and goals described in the performance contract; and

(B) a requirement for a public hearing at least 30 days prior to any district action to extend the contract for an operating partner that failed to meet the performance expectations and goals described in the performance contract;

(6) a contract term stating that the campus is exempt from laws and rules to the fullest extent allowed by TEC, Chapter 12, Subchapter C, and is exempt from all district policies except for laws, rules, and policies that are specifically identified as applicable to the campus in the performance contract;

(7) service-level agreements that describe shared services of the district provided to the operating partner, which may include:

(A) facility use and related matters;

(B) transportation; and

(C) specific education program services, such as providing a special education program.

(8) a weighted per pupil allocation from the district to the operator that provides a student-level allocation of local, state, and federal funds received by the district;

(9) a description of the educational plan for the campus;
and

(10) a description of the consequence(s) in the instance that either the district or the operating partner breaches the contract.

(e) Contract notification to the TEA. In order to qualify as an eligible partnership under TEC, §11.174, notification of contracts related to TEC, §11.174(a)(1), must meet the guidance requirements and deadlines published by the TEA staff.

(f) Contract amendments. Eligible partnerships under TEC, §11.174, must notify the TEA of amendments to performance contracts related to TEC, §11.174(a)(1) and (2).

(g) Monitoring. In order to qualify for ongoing benefits, subsequent to initial eligibility validation or approval, the eligible partnership campus must comply with all information requests or monitoring visits deemed necessary by the TEA staff to monitor the ongoing eligibility of the partnership.

(h) Continued eligibility. To receive benefits under TEC, §11.174(f) and (g) and §42.2511, the operating partnership must continuously meet the requirements in subsection (c)-(g) of this section.

(i) Decision finality. A decision of the commissioner made under this section is a final administrative decision and is not subject to appeal under TEC, §7.057.

§97.1079. Determining Processes and Criteria for Eligible Entity Approval under Texas Education Code, §11.174.

(a) Applicability. This section applies only to independent school districts that intend to contract to partner to operate a campus and receive benefits under Texas Education Code (TEC), §11.174(a)(2).

(b) Definitions. For purposes of this division, the following words and terms shall have the following meaning, unless the context clearly indicates otherwise.

(1) Eligible entity--This term has the meaning assigned in TEC, §12.101(a).

(2) Campus--This term has the meaning assigned in §97.1051(3) of this title (relating to Definitions).

(3) Applicant--This term refers to an independent school district seeking approval of an eligible entity to contract to partner to operate a campus.

(4) Proposed operating partner--This term refers to the eligible entity seeking approval in coordination with an independent school district to contract to partner to operate a campus.

(c) Institutions of higher education. This subsection applies to entities meeting the definition of an institution of higher education as described in TEC, §61.003.

(1) For applicants seeking eligibility approval of an institution of higher education, which has been granted a charter in accordance with TEC, Chapter 12, Subchapter E, as the proposed operating partner, the commissioner of education will treat charter schools granted under TEC, Chapter 12, Subchapter E, as open-enrollment charter schools under TEC, §11.174(a)(1).

(2) All other institutions of higher education seeking eligibility approval will be held to the standards and processes described in TEC, Chapter 12, Subchapter E, and §100.1015 of this title (relating to Applicants for an Open-Enrollment Charter, Public Senior College or University Charter, or Public Junior College Charter).

(3) The commissioner may approve an application under this section if the commissioner determines that the approval of the application will improve student outcomes at the campus.

(d) Private or independent institutions of higher education, non-profits, and governmental entities. This subsection applies to entities meeting the definitions described in TEC, §12.101(a)(2),(3) and (4).

(1) Prior to each eligibility approval cycle, the commissioner shall approve an application form for submission by applicants seeking eligibility approval as specified in TEC, §11.174. The application form may contain, but is not limited to, any of the following:

(A) the timeline for eligibility approval;

(B) scoring criteria and procedures for use by the review panel selected under paragraph (4) of this subsection; and

(C) eligibility approval criteria, including the minimum score necessary for approval.

(2) The Texas Education Agency (TEA) shall review applications submitted under this section. If the TEA determines that an application is not complete and/or the applicant does not meet the eligibility criteria in TEC, §11.174, the TEA shall notify the applicant and allow ten business days for the applicant to submit any missing or explanatory documents.

(A) If, after receiving missing or explanatory documents, the TEA determines that the application remains incomplete and/or the eligibility requirements of TEC, §11.174, have not been met, the application will be denied.

(B) If the documents are not timely submitted, the TEA shall remove the application without further processing. The TEA shall establish procedures and schedules for returning applications without further processing.

(C) Failure of the TEA to identify any deficiency or notify an applicant thereof does not constitute a waiver of the requirement and does not bind the commissioner.

(D) A decision made by the TEA under this subsection to deny, remove, or return an application is a final administrative decision of the TEA and not subject to appeal under TEC, §7.057.

(3) Upon written notice to the TEA, an applicant may withdraw an application.

(4) Applicants with complete applications shall be reviewed by an external application review panel selected by the commissioner. The panel shall review applications in accordance with the procedures and criteria established in the application form. Review panel members shall not discuss applications with anyone except TEA staff. Review panel members shall not accept meals, entertainment, gifts, or gratuities in any form from any person or organization with an interest in the results of an application review. Members of the review panel shall disclose to the TEA immediately the discovery of any past or present relationship with an applicant, including any current or prospective employee, agent, officer, or director of the eligible entity, an affiliated entity, or other party with an interest in the approval of the application.

(5) No recommendation, ranking, or other type of endorsement by a member or members of the review panel is binding on the commissioner.

(6) All parts of the application are releasable to the public under the Texas Public Information Act, Texas Government Code, Chapter 552, and will be posted to the TEA website. Therefore, the following must be excluded or redacted from an application:

(A) personal email addresses;

(B) proprietary material;

(C) copyrighted material;

(D) documents that could violate the Family Educational Rights and Privacy Act (FERPA) by identifying potential students of the partnership school, including, but not limited to, sign-in lists at public meetings about the school, photographs of existing students if the school is currently operating or photographs of prospective students, and/or letters of support from potential charter school parents and/or students; and

(E) any other information or documentation that cannot be released in accordance with Texas Government Code, Chapter 552.

(7) TEA staff may interview applicants whose applications received the minimum score established in the application form, may specify individuals required to attend the interview, and may require the submission of additional information and documentation prior or subsequent to an interview.

(8) The commissioner will consider criteria that include the following when determining whether to approve an applicant.

(A) The criteria described in this subparagraph apply to all campuses. Each applicant must demonstrate:

(i) evidence of a high-quality district charter authorizing process as required by TEC, §12.058, which may include, but is not limited to, the following:

(I) the district's adoption and implementation of an authorizing policy;

(II) the district's adoption and implementation of a charter application, including, but not limited to, the evaluation of:

(-a-) the qualifications, backgrounds, and histories of individuals and entities who will be involved in the governance, management, and educational leadership of the proposed operating partner; and

(-b-) any history of the proposed operator; and

(III) the district's adoption and implementation of codified procedures for monitoring and reviewing in-district charters;

(ii) evidence that the applicant and proposed operating partner meet the requirements to contract to partner to operate, as outlined in §97.1075 of this title (relating to Contracting to Partner to Operate a Campus under Texas Education Code, §11.174) and that the proposed operating partner has the capacity to operate the campus. This evidence will include the following:

(I) the local charter application submitted to the board of trustees process as required by TEC, §12.058;

(II) the performance contract governing the operations of the campus as required by TEC, §12.0531; and

(III) the local charter as required by TEC, §12.059; and

(iii) evidence that the governing body of the operating partner shall remain independent of the independent school district. This may include, but is not limited to, the following:

(I) an assurance that the governing body of the operating partner is not and shall not be comprised of any members of the independent school district's board of trustees or staff;

(II) an assurance that no member of the governing body of the operating partner will be related within the first degree

of affinity or consanguinity with any member of the school district staff or any member of the school district's board of trustees;

(III) an assurance that all members of the governing body of the operating partner have passed and will continually pass the district's conflict of interest checks; and

(IV) an assurance that the district has not appointed a majority of the members of the governing board of the operating partner.

(B) The criteria described in this subparagraph apply to a campus that received an overall performance rating of unacceptable for the school year before operation of the district campus. In addition to the criteria described in subparagraph (A) of this paragraph, the commissioner will consider the following:

(i) evidence that the proposed operating partner has the capacity to operate the campus, including the following:

(I) items considered by the district during its authorizing process;

(II) an operational plan;

(III) a staffing and management plan; and

(IV) a community and family engagement plan;

and

(ii) evidence of financial competency and sustainability by providing evidence of an appropriate financial plan, including the following:

(I) a financial plan and narrative for the campus;

(II) a five-year budget projection of revenue and expenditures for operations by the proposed operating partner; and

(III) support documentation for budget projections as detailed in the budget template that will be provided with the application.

(e) Decision finality. Notwithstanding any other provisions, the commissioner may approve an application under this section if the commissioner determines that the approval of the application will improve student outcomes at the campus. The approval or denial of the application is a final administrative decision by the commissioner and not subject to appeal under TEC, §7.057.

The agency certifies that legal counsel has reviewed the 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 November 27, 2017.

TRD-201704796

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: January 7, 2018

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



TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.21

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to §153.21, Appraiser Trainee and Supervisory Appraisers. The proposed amendments would allow supervisory appraisers to supervise up to five appraiser trainees if the supervisory appraiser and all of the trainees supervised by that supervisory appraiser meet certain additional criteria as required by the Appraiser Qualifications Board (AQB). The additional criteria include the requirements that the supervisory appraiser must have been a certified appraiser for more than five years and that all appraiser trainees supervised by that supervisory appraiser must participate in the voluntary experience reviews established in §153.22 of this chapter.

Kristen Worman, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the proposed amendments. There is no significant impact anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments.

Ms. Worman has also determined that for each year of the first five years the amendments as proposed are in effect the public benefit anticipated as a result of enforcing the section as proposed will be providing an opportunity for supervisory appraisers to supervise more appraiser trainees and encouraging new appraiser trainees to enter the appraisal field consistent with the requirements under state and federal law.

For each year of the first five years the proposed amendments are in effect the amendments will not:

- 1) create or eliminate a government program;
- 2) require the creation of new employee positions or the elimination of existing employee positions;
- 3) require an increase or decrease in future legislative appropriations to the agency;
- 4) require an increase or decrease in fees paid to the agency;
- 5) create a new regulation;
- 6) expand, limit or repeal an existing regulation; or
- 7) increase or decrease the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there will be a positive impact on the state's economy as supervisory appraisers will be able to supervise more appraiser trainees, thereby providing increased job opportunities for persons wanting to enter the appraisal profession.

Comments on the proposed amendments may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules relating to certificates and licenses, and §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the Appraiser Qualifications Board.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§153.21. *Appraiser Trainees and Supervisory Appraisers.*

- (a) Supervision of appraiser trainees required.

- (1) An appraiser trainee may perform appraisals or appraiser services only under the active, personal and diligent direction and supervision of a supervisory appraiser.

- (2) An appraiser trainee may be supervised by more than one supervisory appraiser.

- (3) Number of Appraiser Trainees Supervised.

- (A) Supervisory appraisers may supervise no more than three appraiser trainees at one time unless the requirements in subsection (a)(3)(B) are met; or [-]

- (B) Supervisory appraisers may supervise up to five appraiser trainees at one time if:

- (i) the supervisory appraiser has been licensed as a certified appraiser for more than five years; and

- (ii) all of the supervisory appraiser's appraiser trainees participate in the voluntary trainee experience reviews established in §153.22 of this chapter.

- (4) A supervisory appraiser may be added during the term of an appraiser trainee's license if:

- (A) The supervisory appraiser and appraiser trainee have provided proof to the Board of completion of an approved Appraiser Trainee/Supervisory Appraiser course;

- (B) an application to supervise has been received and approved by the Board; and

- (C) the applicable fee has been paid.

- (5) A licensed appraiser trainee who signs an appraisal report must include his or her license number and the word "Trainee" as part of the appraiser trainee's signature in the report.

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

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

Filed with the Office of the Secretary of State on November 20, 2017.

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PART 9. TEXAS MEDICAL BOARD

CHAPTER 183. ACUPUNCTURE

22 TAC §§183.4, 183.19, 183.20

The Texas State Board of Acupuncture Examiners (Board) proposes amendments to §183.4, concerning Licensure, §183.19, concerning Acupuncture Advertising, and §183.20, concerning Continuing Acupuncture Education.

The amendments to §183.4 add new language under subsection (a)(5) that allows an applicant for licensure to appear before the licensure committee of the Board to request reconsideration of the applicant's ineligibility based on their failure to pass the NCCAOM examination within five attempts. Such amendment allows the Board discretion to reconsider such ineligibility determination. The proposed amendments delete obsolete language from subsection (a)(7). The proposed amendments to subsection (a)(9) provide an alternate mechanism to cure active practice issues faced by some licensure applicants. The remainder of the changes are corrections to punctuation and grammar.

The amendments to §183.19 remove language requiring that an acupuncturist include their license number on print advertising.

The amendments to §183.20 add language to subsection (b)(1) to clarify the criteria for the courses from which the requisite CAE hours are taken. The proposed amendment adds new subsection (b)(2) to specify the number of CAE hours and specific topics which must be taken each year. New subsection (b)(3) is added to clarify the number of CAE hours from courses approved under each category delineated under subsection (b)(1). Spelling corrections were made in subsections (h) and (o).

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing this proposal will be to allow the board discretion to reconsider an applicants' ineligibility, based on an inability to pass the NCCAOM examination within five attempts. The public benefit anticipated as a result of enforcing new subsection (a)(9) will be to allow the board an alternate solution to active practice concerns. Lastly, the public benefit anticipated as a result of enforcing this section will be to have rules that are grammatically correct and consistent with statutes; to eliminate unnecessary requirements related to acupuncturists' print advertisements and to have CAE rules that are clear and consistent with current processes, and to eliminate confusion and redundancies.

Mr. Freshour has also determined that for the first five-year period the sections are in effect there will be no fiscal impact or effect on government growth as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro businesses or rural communities.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed

amendments will be in effect, the agency has determined the following: The proposed rules do not create or eliminate a government program. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency. The proposed rules do not require an increase or decrease in fees paid to the agency. The proposed rules do create a new regulation as described above. The proposed rules do not limit an existing regulation; however, they do expand an existing regulation in that they provide an alternative mechanism to meet active practice requirements for licensure and allow the board discretion to reconsider an applicant's ineligibility based on inability to pass required exams. The proposed rules also repeal an existing regulation as described above. The proposed rules do not increase or decrease the number of individuals subject to the rule's applicability. The proposed rules do not positively or adversely affect this state's economy.

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

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §205.101, which provides authority for the Board to recommend rules to establish licensing and other fees and recommend rules necessary to administer and enforce this chapter.

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

§183.4. Licensure.

(a) Qualifications. An applicant must present satisfactory proof to the acupuncture board that the applicant meets the following requirements:

- (1) is at least 21 years of age;
- (2) is of good professional character as defined in §183.2 of this chapter (relating to Definitions);
- (3) has successfully completed 60 semester hours of general academic college level courses, other than in acupuncture school, that are not remedial and would be acceptable at the time they were completed for credit on an academic degree at a two or four year institution of higher education within the United States accredited by an agency recognized by the Higher Education Coordinating Board or its equivalent in other states as a regional accrediting body. Coursework completed as a part of a degree program in acupuncture or Oriental medicine may be accepted by the acupuncture board if, in the opinion of the acupuncture board, such coursework is substantially equivalent to the required hours of general academic college level coursework;
- (4) is a graduate of an acceptable approved acupuncture school;
- (5) has taken and passed, within five attempts, each component of the full National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) examination;[-]

(A) If an applicant submits to multiple attempts on a component before and on or after June 1, 2004, the number of attempts shall be combined based on the subject matter tested;

(B) An applicant who is unable to pass each component of the NCCAOM examination, within five attempts, may be allowed to appear before the Licensure Committee of the board to reconsider applicant's ineligibility if the applicant;

(i) is allowed a 6th attempt by NCCAOM;

(ii) passes on the 6th attempt; and

(iii) presents satisfactory evidence to the board as to why the applicant required an additional examination attempt and demonstrates good cause as to why applicant's determination of ineligibility should be reconsidered.

(C) A decision to reconsider an applicant's ineligibility based on subparagraph (B) of this paragraph shall be a discretionary decision of the board;

(6) has taken and passed the CCAOM (Council of Colleges of Acupuncture and Oriental Medicine) Clean Needle Technique (CNT) course and practical examination;

(7) ~~has taken and passed [for applicants who apply for a license on or after September 1, 2007, passes]~~ a jurisprudence examination ("JP exam"), which shall be conducted on the licensing requirements and other laws, rules, or regulations applicable to the acupuncture profession in this state. The jurisprudence examination shall be developed and administered as follows:

(A) Questions for the JP Exam shall be prepared by agency staff with input from the Acupuncture board and the agency staff shall make arrangements for a facility by which applicants can take the examination.

(B) Applicants must pass the JP exam with a score of 75 or better. ~~[within three attempts, unless the Board allows an additional attempt based upon a showing of good cause. An applicant who is unable to pass the JP exam within three attempts must appear before the Licensure Committee of the board to address the applicant's inability to pass the examination and to re-evaluate the applicant's eligibility for licensure. It is at the discretion of the committee to allow an applicant additional attempts to take the JP exam.]~~

(C) An examinee shall not be permitted to bring medical books, compends, notes, medical journals, calculators or other help into the examination room, nor be allowed to communicate by word or sign with another examinee while the examination is in progress without permission of the presiding examiner, nor be allowed to leave the examination room except when so permitted by the presiding examiner.

(D) Irregularities during an examination such as giving or obtaining unauthorized information or aid as evidenced by observation or subsequent statistical analysis of answer sheets~~;~~ shall be sufficient cause to terminate an applicant's participation in an examination, invalidate the applicant's examination results, or take other appropriate action.

(E) A person who has passed the JP Exam shall not be required to retake the Exam for another or similar license, except as a specific requirement of the board~~;~~

(8) is able to communicate in English as demonstrated by one of the following:

(A) passage of the NCCAOM examination taken in English;

(B) passage of the TOEFL (Test of English as a Foreign Language) with a score of at least "intermediate" on the Reading and Listening sections and a score of at least "fair" on the Speaking and Writing sections of the Internet Based Test (iBT®), or a score of 550 or higher on the paper based test (PBT);

(C) passage of the TSE (Test of Spoken English) with a score of 45 or higher;

(D) passage of the TOEIC (Test of English for International Communication) with a score of 500 or higher;

(E) graduation from an acceptable approved school of acupuncture located in the United States or Canada; or

(F) at the discretion of the acupuncture board, passage of any other similar, validated exam testing English competency given by a testing service with results reported directly to the acupuncture board or with results otherwise subject to verification by direct contact between the testing service and the acupuncture board; ~~and~~;

(9) can demonstrate current competence through the active practice of acupuncture as follows:~~;~~

(A) All applicants for licensure shall provide sufficient documentation to the board that the applicant has, on a full-time basis, actively treated persons, been a student at an acceptable approved acupuncture school, or been on the active teaching faculty of an acceptable approved acupuncture school, within either of the last two years preceding receipt of an application for licensure.

(B) The term "full-time basis," for purposes of this section, shall mean at least 20 hours per week for 40 weeks duration during a given year.

(C) Applicants who do not meet the requirements of subparagraphs (A) and (B) of this paragraph may, in the discretion of the executive director or board, be eligible for an unrestricted license or a restricted license subject to one or more of the following conditions or restrictions:

(i) limitation of the practice of the applicant to specified components of the practice of acupuncture and/or exclusion of specified components of the practice of acupuncture; or

(ii) remedial education including, but not limited to, enrollment, as a student, and successful completion of 240 hours of clinical practice at an acceptable approved acupuncture school or other structured program approved by the board.~~;~~ ~~or~~

(10) Alternative License Procedure for Military Service Members, Military Veterans and Military Spouses.

(A) An applicant who is a military service member, military veteran or military spouse may be eligible for alternative demonstrations of competency for certain licensure requirements. Unless specifically allowed in this subsection, an applicant must meet the requirements for licensure as specified in this chapter.

(B) To be eligible, an applicant must be a military service member, military veteran or military spouse and meet one of the following requirements:

(i) holds an active unrestricted acupuncture license issued by another state that has licensing requirements that are substantially equivalent to the requirements for a Texas acupuncture license; or

(ii) within the five years preceding the application date held an acupuncture license in this state.

(C) The executive director may waive any prerequisite to obtaining a license for an applicant described by this subsection after reviewing the applicant's credentials.

(D) Applications for licensure from applicants qualifying under this subsection shall be expedited by the board's licensure division.

(E) Alternative Demonstrations of Competency Allowed. Applicants qualifying under this subsection:

(i) are not required to comply with subsection (c)(1) of this section; and

(ii) notwithstanding the one year expiration in subsection (b)(1)(B) of this section, are allowed an additional 6 months to complete the application prior to it becoming inactive; and

(iii) notwithstanding the 60 day deadline in subsection (b)(1)(G) of this section, may be considered for permanent licensure up to 5 days prior to the board meeting.

(F) Applicants with Military Experience.

(i) For applications filed on or after March 1, 2014, the board shall, with respect to an applicant who is a military service member or military veteran as defined in §183.2 of this chapter, credit verified military service, training, or education toward the licensing requirements, other than an examination requirement, for a license issued by the board.

(ii) This section does not apply to an applicant who:

(I) has had an acupuncture license suspended or revoked by another state or a Canadian province;

(II) holds an acupuncture license issued by another state or a Canadian province that is subject to a restriction, disciplinary order, or probationary order; or

(III) has an unacceptable criminal history.

(b) - (f) (No change.)

§183.19. *Acupuncture Advertising.*

~~[(a) License number on print advertising: Except as provided for in subsection (b) of this section, all written advertising communicated by any means or medium which is authorized, procured, promulgated, or used by any acupuncturist shall reflect the current Texas acupuncture license number of the acupuncturist who authorized, procured, promulgated, or used the advertisement and/or is the subject of the advertising. In the event that more than one acupuncturist authorizes, procures, promulgates, uses, and/or is the subject of the advertising, each such acupuncturist shall ensure that any such print medium reflects the current Texas acupuncture license number of the acupuncturist.]~~

~~[(b) Exceptions: The following forms of advertising shall be exempt from the provisions of subsection (a) of this section:]~~

~~[(1) business cards;]~~

~~[(2) office, clinic, or facility signs at the office, clinic, or facility location;]~~

~~[(3) single line telephone listings; and,]~~

~~[(4) billboard advertising.]~~

~~[(e) [Misleading or deceptive advertising.] Acupuncturists shall not authorize or use false, misleading, or deceptive advertising, and, in addition, shall not engage in any of the following:~~

~~(1) hold themselves out as a physician or surgeon or any combination or derivative of those terms unless also licensed by the medical board as a physician or surgeon as defined under the Medical Practice Act, Tex. Occ. Code Ann. §151.002(a)(13) (relating to Definitions);~~

~~(2) use the terms "board certified" unless the advertising also discloses the complete name of the board which conferred the referenced certification; or,~~

~~(3) use the terms "board certified" or any similar words or phrases calculated to convey the same meaning if the advertised board~~

certification has expired and has not been renewed at the time the advertising in question was published, broadcast, or otherwise promulgated.

§183.20. *Continuing Acupuncture Education.*

(a) Purpose. This section is promulgated to promote the health, safety, and welfare of the people of Texas through the establishment of minimum requirements for continuing acupuncture education (CAE) for licensed Texas acupuncturists so as to further enhance their professional skills and knowledge.

(b) Minimum Continuing Acupuncture Education. As a prerequisite to the annual registration of the license of an acupuncturist, the acupuncturist shall complete 17 hours of CAE each year.

(1) The required hours shall be from courses that meet one of the following criteria at the time the hours are taken:

(A) are designated or otherwise approved for credit by the Texas State Board of Acupuncture Examiners based on a review and recommendation of the course content by the Education Committee of the board as described in subsection (n) of this section;

(B) are offered by ~~[approved]~~ providers approved by the Texas State Board of Acupuncture Examiners;

(C) have been approved for CAE credit for a minimum of three years by another state acupuncture board, having first gone through a formal approval process in such state;

(D) approved by the NCCAOM (National Certification Commission for Acupuncture and Oriental Medicine) for professional development activity credit; or

(E) are provided outside of the United States by a provider of continuing acupuncture education that is [are] acceptable to the Board.

(2) The required CAE hours shall include the following core hours:

(A) At least ~~four~~ [eight] hours shall be in general acupuncture therapies [in order to ensure that a licensee's CAE is comprehensive and that the licensee's overall acupuncture knowledge, skills, and competence are enhanced].

(B) [(3)] At least ~~two~~ [one] of the required hours shall be from a course in ethics and safety.

(C) [(4)] At least ~~three~~ [two] of the required hours shall be in herbology. [More than two hours shall be expected of a licensee whose primary practice includes prescriptions of herbs.]

(D) [(5)] At [Effective for licensees applying for renewal of their licenses on or after November 30, 2010, at] least two hours [one hour] of biomedicine.

(E) [(6)] At least [No more than] two of the required hours shall be in [may be from] courses that primarily relate to [practice enhancement or] business practices or office administration.

(3) The remaining CAE hours may be from other courses approved under paragraph (1) of this subsection, subject to the limitations under paragraphs (5) and (6) of this subsection.

(4) [(7)] Courses may be taught through live lecture, distance learning, or the Internet.

(5) [(8)] No more than a total of eight hours completed under paragraph (1)(D) or (E) of this subsection may be applied to the total hours required each registration period.

(6) At least nine hours applied to the total hours required each registration period must be approved under paragraph (1)(A) - (C) of this subsection.

(c) - (g) (No change.)

(h) Nonrenewal for Insufficient Continuing Acupuncture Education. Unless exempted under the terms of this section, the apparent failure of an acupuncturist to obtain and timely report the 17 hours of continuing education hours as required and provided for in this section shall result in nonrenewal of the license until such time as the acupuncturist obtains and reports the required hours; however, the executive director of the board may issue to such an acupuncturist a temporary license numbered so as to correspond to the non-renewed [~~nonrenewed~~] license. Such a temporary license issued pursuant to this subsection may be issued to allow the board to verify the accuracy of information related to the continuing acupuncture education hours of the acupuncturist and to allow the acupuncturist who has not obtained or timely reported the required number of hours an opportunity to correct any deficiency so as not to require termination of ongoing patient care.

(i) - (n) (No change.)

(o) Continuing Acupuncture Education Approval Requests. All requests for approval of courses, programs, or activities for purposes of satisfying CAE credit requirements shall be submitted in writing to the Education Committee of the board on a form approved by the board, along with any required fee, and accompanied by information, documents, and materials accurately describing the course, program, or activity, and necessary for verifying compliance with the requirements set forth in subsection (n) of this section. At the discretion of the board or the Education Committee, supplemental information, documents, and materials may be requested as needed to obtain an adequate description of the course, program, or activity and to verify compliance with the requirements set forth in subsection (n) of this section. At the discretion of the board or the Education Committee, inspection of original supporting documents may be required for a determination on an approval request. The Acupuncture Board shall have the authority to conduct random and periodic checks of courses, programs, or activities to ensure that criteria for education approval as set forth in subsection (n) of this section have been met and continue to be met by the education provider. Upon requesting approval of a course, program, or activity, the education provider shall agree to such checks by the Acupuncture Board or its designees, and shall further agree to provide supplemental information, documents, and material describing the course, program, or activity which, in the discretion of the Acupuncture Board, may be needed for approval or continued approval of the course, program, or activity. Failure of an education provider to provide the necessary information, documents, and materials to show compliance with the standards set forth in subsection (n) of this section shall be grounds for denial of CAE approval or rescission [~~recession~~] of prior approval in regard to the course, program, or activity.

(p) - (w) (No change.)

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

Filed with the Office of the Secretary of State on November 21, 2017.

TRD-201704760

Scott Freshour

Interim Executive Director

Texas Medical Board

Earliest possible date of adoption: January 7, 2018

For further information, please call: (512) 305-7016



PART 11. TEXAS BOARD OF NURSING

CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §213.23

Introduction

The Texas Board of Nursing (Board) proposes amendments to §213.23, concerning Decision of the Board. The amendments are proposed under the authority of the Government Code §§2001.058, 2001.142, 2001.144, 2001.145, and §2001.146 and the Occupations Code §§301.151, 301.469, and 301.459(a) and (a-1), as amended by House Bill (HB) 2950, effective September 1, 2017.

Section by Section Overview

The proposed changes to §213.23(a) make a grammatical change. This change is not considered substantive.

The proposal eliminates the current text in subsections (b) and (c) from the rule. SOAH has adopted its own procedural rules that address the issues contained in these subsections. Further, SOAH recently amended its procedural rules. In an effort to avoid any inconsistency between the rules of SOAH and the rules of the Board, the Board has determined that it is unnecessary to restate any portion of SOAH's rules in §213.23. Parties to a contested case hearing are subject to the procedural rules adopted by SOAH, and the parties should familiarize themselves with the rules of SOAH directly.

Proposed amended §213.23(b) merely re-orders the subsection appropriately and makes a grammatical change. This change is not considered substantive in nature.

The proposed amendments to §213.23(c) and (d) incorporate the statutory changes made by HB 2950. HB 2950, enacted by the 85th Texas Legislature, changes the Board's current procedures for reviewing and adopting proposed findings of fact and conclusions of law following a contested case at the State Office of Administrative Hearings (SOAH). Pursuant to amended §301.459(a) and new (a-1), the Board may no longer change a finding of fact or conclusion of law or vacate or modify an order of an Administrative Law Judge (ALJ) in a contested case matter. Instead, the Board may obtain judicial review of any finding of fact or conclusion of law issued by the ALJ. Further, while the ALJ may make a recommendation regarding an appropriate sanction or action, the Board retains the sole authority and discretion to determine the appropriate action or sanction. These statutory changes affect the procedures currently outlined in §213.23.

Currently, §213.23 permits individuals to submit written briefings to the Board regarding a proposal for decision (PFD) or default dismissal from SOAH. The current rule also permits individuals to request an appearance before the Board to make an oral presentation regarding a PFD or default dismissal. Historically, parties have appeared before the Board to argue for changes to the proposed findings of fact and conclusions of law in a PFD and to address the sanction or action of the Board. Because HB 2950 eliminates the Board's ability to make changes to the proposed

findings of fact and conclusions of law in a PFD or default dismissal, the Board has determined that it is unnecessary and impractical to continue this practice. However, consistent with the provisions of the Government Code §2001.062, the proposed amendments continue to permit a party to file written exceptions or briefs with the Board and written responses to exceptions and briefs, and any party wishing to address the proposed findings of fact, conclusions of law, or proposed sanction or Board action may continue do so in this manner.

Consistent with the changes made by HB 2950, the proposed amendments eliminate the current text in §213.23(f) and (g), which reflect the Board's current procedures for considering and amending proposed findings of fact and conclusions of law in a PFD.

The proposed amendments to §213.23(e) re-order the subsection appropriately. This change is not considered substantive in nature.

The proposed amendments to §213.23(f) re-order the subsection appropriately and include a statutory reference for clarification. These changes are not considered substantive in nature.

The proposed amendments to §213.23(g) re-order the subsection appropriately. This change is not considered substantive in nature.

The proposed amendments to §213.23(h) re-order the subsection appropriately and amend a statutory reference for clarification. The Government Code has undergone recent amendment regarding the filing of motions for rehearing and appeals procedures. In an effort to avoid any inconsistency between the Government Code Chapter 2001 and the Board's rules in this regard, the proposed amendments provide a global reference to the controlling statutory chapter. Parties are subject to the requirements of Chapter 2001, as they apply to appellate rights, and parties should familiarize themselves with those provisions directly. As such, the Board has determined that it is unnecessary to restate or incorporate any specific portion of those statutory provisions in §213.23.

Finally, the proposal eliminates the current text in subsection (k), as that text relates to the appellate rights of parties, and proposed amended §213.23(h) addresses those issues more specifically.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of rules that are clear and easily understood and comply with the statutory mandates of HB 2950.

There are no anticipated costs of compliance with the proposal. The proposed amendments do not implement new requirements that would result in a cost of compliance to licensees. Further, the Board does not anticipate that licensees will significantly alter their current compliance with the rule based on the proposed amendments. Further, because there are no anticipated costs associated with the adoption of this proposal, the Board is not required to comply with the requirements of Tex. Gov't Code. §2001.0045. Even if costs were anticipated as a result of the implementation of the proposal, the Board is exempted

from compliance with §2001.0045 under the provisions of §2001.0045(c)(9), as the proposal is necessary to implement the statutory mandates of HB 2950.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposed amendments because there are no anticipated costs of compliance with the proposal. As such, the Board is not required to prepare a regulatory flexibility analysis.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Tex. Admin. Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) implementation of the proposal does not require the creation of new employee positions or the elimination of existing employee positions, as the proposal is not expected to have an effect on existing agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board, as the proposal is not expected to have an effect on existing agency positions; (iv) the proposal does not require an increase or decrease in fees paid to the Board; (v) the proposal does not create a new regulation; (vi) the proposal does not expand or repeal an existing regulation; (vii) the proposal does not increase or decrease the number of individuals subject to the rule's applicability; and (viii) the proposal does not have an effect on the state's economy.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal 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, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on January 7, 2018 to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the authority of the Government Code §§2001.058, 2001.142, 2001.144, 2001.145, and §2001.146 and the Occupations Code §§301.151, 301.469, 301.459(a) and (a-1), §301.151, and §301.252(a)(1) and (a-2).

Cross Reference To Statute. The following statutes are affected by this proposal: the Government Code §§2001.058, 2001.142, 2001.144, 2001.145, and §2001.146 and the Occupations Code §§301.151, 301.469, 301.459(a) and (a-1), 301.151, and §301.252(a)(1) and (a-2).

§213.23. Decision of the Board.

(a) Except as to those matters expressly delegated to the executive director for ratification, either the Board or the Eligibility and Disciplinary Committee of the Board, may make final decisions in all matters relating to the granting or denial of a license or permit, discipline, temporary suspension, or administrative and civil penalties. This

includes the consideration and resolution of a default dismissal from the State Office of Administrative Hearings pursuant to Texas Government [Tex. Gov't] Code §2001.058(d-1).

~~[(b) Prior to the issuance of a proposal for decision, a party may submit proposed findings of fact and conclusions of law to the judge. The judge shall issue a ruling on each proposed finding of fact and conclusion of law and shall set forth the specific reason for not adopting a particular proposed finding of fact or conclusion of law.]~~

~~[(c) Any party of record who is adversely affected by the proposal for decision of the judge shall have the opportunity to file with the judge exceptions to the proposal for decision and replies to exceptions to the proposal for decision in accordance with 1 TAC §155.507. The proposal for decision may be amended by the judge in accordance with 1 TAC §155.507 without again being served on the parties.]~~

~~[(b) [(d)] A [The] proposal for decision may be acted on by the Board or the Eligibility and Disciplinary Committee, in accordance with this section, after the expiration of 10 days after the filing of replies to exceptions to the proposal for decision or upon the day following the day exceptions or replies to exceptions are due if no such exceptions or replies are filed.~~

~~[(c) [(e)] Following the issuance of a proposal for decision or default dismissal, parties shall have an opportunity to file written exceptions and/or briefs with the Board. An opportunity shall be given to file a written response to written exceptions and/or briefs. An individual wishing to file written exceptions and/or a brief for the Board's consideration must do so no later than 15 calendar days prior to the date of the next regularly scheduled meeting where the Board or the Eligibility and Disciplinary Committee will deliberate on the proposal for decision or default dismissal. [An individual wishing to make an oral presentation regarding a proposal for decision or default dismissal must request to do so, and file written exceptions and/or a brief, no later than 15 calendar days prior to the date of the next regularly scheduled meeting where the Board or the Eligibility and Disciplinary Committee will deliberate on the proposal for decision or default dismissal.] The Board will not consider [any requests for an oral presentation and/or] any written exceptions and/or briefs submitted in violation of these requirements.~~

~~[(d) A proposal for decision will be considered by the Board in accordance with Texas Occupations Code §301.459 and Texas Government Code Chapter 2001. Further, the Board may obtain judicial review of any finding of fact or conclusion of law issued by the administrative law judge, as provided by Texas Government Code §2001.058(f)(5).~~

~~[(f) It is the policy of the Board to change a finding of fact or conclusion of law in a proposal for decision or to vacate or modify the proposed order of a judge when, the Board determines:]~~

~~[(1) that the judge did not properly apply or interpret applicable law, agency rules, written policies provided by staff or prior administrative decisions;]~~

~~[(2) that a prior administrative decision on which the judge relied is incorrect or should be changed; or]~~

~~[(3) that a technical error in a finding of fact should be changed.]~~

~~[(g) If the Board modifies, amends, or changes the recommended proposal for decision or order of the judge, an order shall be prepared reflecting the Board's changes as stated in the record of the meeting and stating the specific reason and legal basis for the changes made according to subsection (f) of this section.]~~

~~[(e) [(h)] An order of the Board shall be in writing and may be signed by the executive director on behalf of the Board.~~

~~[(f) [(i)] A copy of the order shall be mailed to all parties and to the party's last known employer as a nurse in accordance with Texas Occupations Code §301.469.~~

~~[(g) [(j)] The decision of the Board is immediate, final, and appealable upon the signing of the written order by the executive director on behalf of the Board where:~~

~~(1) the Board finds and states in the order that an imminent peril to the public health, safety, and welfare requires immediate effect of the order; and~~

~~(2) the order states it is final and effective on the date rendered.~~

~~[(k) A motion for rehearing shall not be a prerequisite for appeal of the decision where the order of the Board contains the finding set forth in subsection (j) of this section.]~~

~~[(h) [(t)] Motions for rehearing under this section are controlled by Texas Government Code Chapter 2001 [§2001.145].~~

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 November 27, 2017.

TRD-201704794

Jena Abel

Deputy General Counsel

Texas Board of Nursing

Earliest possible date of adoption: January 7, 2018

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



22 TAC §213.27

Introduction

The Texas Board of Nursing (Board) proposes amendments to §213.27, concerning Good Professional Character. The amendments are proposed under the authority of the Occupations Code §301.151 and §301.252(a)(1) and (a-2), as amended by House Bill (HB) 2950, effective September 1, 2017, and are necessary to comply with the adopted recommendations of the Texas Sunset Advisory Commission (Commission) and legislative directives.

Background

The Board was last reviewed by the Commission in 2006-2007 (during the 80th Legislative cycle), and underwent its current review in 2016 - 2017 (during the 85th Legislative cycle). The Commission adopted several recommendations as a result of its review of the Board. One specific recommendation concerned the Board's definition of good professional character. The Commission found that the Board had not defined good professional character through objective criteria, or limited its application to the practice of nursing. The Commission further found that because the subjective criteria of the rule could be interpreted differently by different people, licensees may not receive fair treatment from the Board. As a result, the Commission re-iterated that the Board's definition and application of good professional character should be limited to the practice of nursing and rec-

ommended that the Board revise its rule to remove any subjective language or requirements not specifically related to the practice of nursing. Further, the Commission recommended that the Board seek stakeholder input to revise the rules and adopt new rules by March 1, 2018. The Commission's recommendations were codified in HB 2950.

Stakeholder Input

The Board convened and charged its Advisory Committee on Licensure, Eligibility and Discipline (Committee) with reviewing the Commission's recommendations and providing proposed changes to the Board. The Committee met on May 12, 2017; June 9, 2017; August 11, 2017; and September 15, 2017, to review all of the Commission's recommendations regarding discipline and comply with the Board's charge. The Committee reserved the meeting on September 15, 2017, to review and discuss the Board's good professional character rule. However, the Committee was unable to convene a quorum at the Committee's September 15, 2017, meeting, and was unable to make formal recommendations to the Board regarding changes to its good professional character rule. However, the Committee members that were present at the September 15, 2017, meeting, discussed the Board's good professional character rule and provided informal comments to Staff.

The Board reviewed and discussed the Commission's final recommendations, statutory changes made by HB 2950, the Committee's informal comments, and Board Staff's recommendations for changes to its good professional character rule at the October 2017 regularly scheduled Board meeting. The Board approved the proposed changes to the good professional character rule and directed they be published in the Texas Register for public comment.

Overview of Proposed Changes

First, the Board reviewed the statutory changes in HB 2950 (relating to good professional character) to ensure that the proposed changes to the rule comply with the legislature's intent. HB 2950 amended Texas Occupations Code §301.252(a)(1) to require all applicants for licensure to provide evidence of good professional character related to the practice of nursing. Further, HB 2950 added new §301.252(a-2), which provides that an applicant who provides satisfactory evidence that he/she has not committed a violation of Chapter 301 or a rule adopted under Chapter 301 is considered to have good professional character related to the practice of nursing. Further, the new subsection provides that a determination by the Board that an applicant does not have good professional character related to the practice of nursing must be based on a showing by the Board of a clear and rational connection between a violation of Chapter 301 or a rule adopted under Chapter 301 and the applicant's ability to effectively practice nursing.

In order to ensure that the Board's proposed changes comply with the mandates of HB 2950, the Board reviewed the rule to identify and remove tenuous connections or subjective language from the rule that is not specifically related to the practice of nursing. The Board, however, believes that the changes made by HB 2950 still require a showing of good professional character. To that end, the Board has incorporated the statutory parameters of HB 2950 into its definition of good professional character and any ensuing evaluation and determination that an applicant does not have good professional character. The Board further believes that the remaining specified factors in the rule are clearly and ra-

tionally connected to the practice of nursing and are not overly subjective in nature to prevent fair and consistent application.

Section by Section Overview

Section 301.252(a)(1) requires applicants to demonstrate good professional character in order to obtain a license to practice nursing in Texas. Consistent with this statutory requirement, proposed amended §213.27(a) requires all individuals seeking to obtain or retain a license or privilege to practice nursing in Texas to have good professional character. If an individual must demonstrate good professional character in order to obtain a license, the Board believes that the individual should also be required to maintain good professional character in order to retain his/her license to practice nursing in Texas. Because individuals may also practice nursing in Texas through a multistate privilege, the proposal also requires these individuals to maintain good professional character to practice nursing in Texas. The Board believes these requirements are consistent with the statutory mandates of HB 2950.

Proposed amended §213.27(b) defines good professional character as the integrated pattern of personal, academic, and occupational behaviors that indicates that an individual is able to consistently conform his/her conduct to the requirements of the Nursing Practice Act (Chapter 301), the Board's rules, and generally accepted standards of nursing practice. Further, the proposed amended subsection re-iterates the statutory changes made by HB 2950 by providing that an individual will be considered to have good professional character if he/she provides satisfactory evidence that he/she has not committed a violation of the Nursing Practice Act or a rule adopted by the Board.

Proposed amended §213.27(c) addresses the factors that must be considered before a determination may be made that an individual does not have good professional character. First, the proposed amended subsection incorporates the new mandate in §301.252 that a determination that an individual does not have good professional character related to the practice of nursing must be based on a showing by the Board of a clear and rational connection between a violation of the Nursing Practice Act or a rule adopted by the Board and the individual's ability to effectively practice nursing.

If an individual has committed a violation of the Nursing Practice Act (Chapter 301) or a rule adopted by the Board under Chapter 301, the statutory changes made by HB 2950 permit an evaluation and determination of the individual's good professional character. In conducting such an evaluation, the proposal requires the Board to consider: whether the individual will be able to practice nursing in an autonomous role with patients/clients, their families, significant others, healthcare professionals, and members of the public who are or who may become physically, emotionally, or financially vulnerable; whether the individual will be able to recognize and honor the interpersonal boundaries appropriate to any therapeutic relationship or health care setting; whether the individual will be able to make appropriate judgments and decisions that could affect patients/clients and/or the public; whether the individual has exhibited an inability to conform his/her behavior to the requirements of the Nursing Practice Act, Board rules and regulations, including §217.11 (relating to Standards of Nursing Practice) and §217.12 (relating to Unprofessional Conduct) of this title, and generally accepted standards of nursing practice; and whether the individual will be able to promptly and fully self-disclose facts, circumstances, events, errors, and omissions, when such disclosure could enhance the

health status of patients/clients or the public and/or could protect patients/clients or the public from an unnecessary risk of harm. The Board believes these proposed factors are directly connected to the practice of nursing and are necessary to ensure that the individual is able to practice nursing safely and effectively.

Finally, nurses from other jurisdictions may also practice nursing in Texas through a multistate compact privilege, or through the endorsement process. If a nurse has committed misconduct in another jurisdiction, that misconduct may also constitute a violation of the Texas Nursing Practice Act (Texas Occupations Code §301.452(b)(8)) and may have bearing on a nurse's good professional character. To this end, proposed amended §213.27(d) re-iterates that a certified copy of an order of denial, suspension, or revocation or other action relating to an individual's license or privilege to practice nursing in another jurisdiction or under federal law is conclusive evidence of that action. This is merely a re-statement of the provisions of Texas Occupations Code §301.456. Any additional evaluation of the nurse's good professional character would be determined according to the other provisions of the proposal.

The remainder of the proposal eliminates provisions from the rule text that are inconsistent with the mandates of HB 2950, are unnecessary, obsolete, or redundant.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of rules that comply with the Commission's recommendations and the statutory mandates of HB 2950.

There are no anticipated costs of compliance with the proposal. The proposed amendments do not implement new requirements or restrictions, and in some cases, remove existing restrictions from the text of the rule. Further, the Board does not anticipate that licensees will alter their compliance with the rule based on the proposed amendments. Further, because there are no anticipated costs associated with the adoption of this proposal, the Board is not required to comply with the requirements of Texas Government Code. §2001.0045. Even if costs were anticipated as a result of the implementation of the proposal, the Board is exempted from compliance with §2001.0045 under the provisions of §2001.0045(c)(9), as the proposal is a direct result of the Commission's recommendations and is necessary to implement the statutory mandates of HB 2950.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposed amendments because there are no anticipated costs of compliance with the proposal. As such, the Board is not required to prepare a regulatory flexibility analysis.

Government Growth Impact Statement. The Board is required, pursuant to Texas Government Code §2001.0221 and 34 Texas Administrative Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect:

(i) the proposal does not create or eliminate a government program;

(ii) implementation of the proposal does not require the creation of new employee positions or the elimination of existing employee positions, as the proposal does not create new restrictions or requirements and is not expected to have an effect on existing agency positions;

(iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board, as the proposal does not create new restrictions or requirements and is not expected to have an effect on existing agency positions;

(iv) the proposal does not require an increase or decrease in fees paid to the Board;

(v) the proposal does not create a new regulation;

(vi) the proposal does not expand or repeal an existing regulation, and only limits the existing regulation to the extent that it eliminates subjective criteria from the rule that is not directly and rationally related to the practice of nursing, as is required by the recommendations of the Commission and the statutory mandates of HB 2950;

(vii) the proposal does not increase or decrease the number of individuals subject to the rule's applicability; and

(viii) the proposal does not have an effect on the state's economy.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal 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, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on January 7, 2018, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the authority of the Occupations Code §301.151 and related §301.252(a)(1) and (a-2).

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.252(a)(1) requires each applicant for a registered nurse license or a vocational nurse license to submit to the Board a sworn application that demonstrates the applicant's qualifications under Chapter 301, accompanied by evidence that the applicant has good professional character related to the practice of nursing.

Section 301.252(a-1) provides that an applicant who provides satisfactory evidence that the applicant has not committed a violation of Chapter 301 or a rule adopted under Chapter 301 is considered to have good professional character related to the practice of nursing. Further, a determination by the Board that an applicant does not have good professional character related to the practice of nursing must be based on a showing by the Board of a clear and rational connection between a violation of Chapter 301 or a rule adopted under Chapter 301 and the applicant's ability to effectively practice nursing.

Cross Reference To Statute. The following statutes are affected by this proposal:

Sections 213.27, 301.151, and 301.252(a)(1) and (a-2)

§213.27. *Good Professional Character.*

(a) Every individual who seeks to practice nursing in Texas must have good professional character related to the practice of nursing. This requirement includes all individuals seeking to obtain or retain a license or privilege to practice nursing in Texas.

(b) The Board defines good professional character as the integrated pattern of personal, academic, and occupational behaviors that [which, in the judgment of the Board,] indicates that an individual is able to consistently conform his/her conduct to the requirements of the Nursing Practice Act, the Board's rules [and regulations], and generally accepted standards of nursing practice. An individual who provides satisfactory evidence that he/she has not committed a violation of the Nursing Practice Act or a rule adopted by the Board is considered to have good professional character related to the practice of nursing. [An individual must maintain good professional character to ensure that he/she is able to consistently act in the best interest of patients/clients and the public. In all cases, it is the individual's burden to provide evidence of good professional character in order to obtain or retain licensure.]

(c) A determination that an individual does not have good professional character related to the practice of nursing must be based on a showing by the Board of a clear and rational connection between a violation of the Nursing Practice Act or a rule adopted by the Board and the individual's ability to effectively practice nursing. When evaluating the rationale connection between the relevant conduct and the ability to effectively practice nursing, the Board will consider the following factors: [When evaluating whether an individual has demonstrated good professional character in an eligibility or disciplinary matter, the Executive Director, the Board, and the State Office of Administrative Hearings (SOAH) shall consider the following factors:]

- {(1) the individual's age, education, experience, and behavioral history; }
- {(2) whether the individual is able to distinguish right from wrong;}
- {(3) whether the individual is able to think and act rationally;}
- {(4) whether the individual is able to keep promises and honor obligations }
- {(5) whether the individual is accountable for his/her own behavior and/or accepts responsibility for his/her actions;}

(1) [(6)] whether the individual will be [is] able to practice nursing in an autonomous role with patients/clients, their families, significant others, healthcare professionals, and members of the public who are or who may become physically, emotionally, or financially vulnerable;

(2) [(7)] whether the individual will be [is] able to recognize and honor the interpersonal boundaries appropriate to any therapeutic relationship or health care setting;

(3) [(8)] whether the individual will be [is] able to make appropriate judgments and decisions that could affect patients/clients and/or the public;

(4) [(9)] whether the individual has exhibited an inability to conform his/her behavior to the requirements of the Nursing Practice Act, Board rules and regulations, including §217.11 (relating to Standards of Nursing Practice) and §217.12 (relating to Unprofessional Conduct) of this title, and generally accepted standards of nursing practice; and

(5) [(10)] whether the individual will be [is] able to promptly and fully self-disclose facts, circumstances, events, errors, and omissions, when such disclosure could enhance the health status of patients/clients or the public and/or could protect patients/clients or the public from an unnecessary risk of harm.[: and]

[(11) any other behaviors bearing on the individual's honesty, accountability, trustworthiness, reliability, or integrity.]

[(d) The following eligibility and disciplinary sanction policies, as applicable, and §213.28(d) of this chapter (relating to Licensure of Individuals with Criminal History) shall be used by the Executive Director, Board, and SOAH in conjunction with this section when evaluating good professional character in eligibility and disciplinary matters, as applicable]

[(1) Sanctions for Behavior Involving Fraud, Theft, and Deception, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.]

[(2) Sanctions for Behavior Involving Lying and Falsification, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.]

[(3) Sanctions for Sexual Misconduct approved by the Board and published on February 22, 2008, in the *Texas Register* (33 TexReg 1649) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>; and]

[(4) Sanctions for Substance Use Disorders and Other Alcohol and Drug Related Conduct, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.]

(d) [(e)] Actions from Other Jurisdictions. A certified copy of the order of the denial, suspension, or revocation or other action relating to an individual's license or privilege to practice nursing in another jurisdiction or under federal law is conclusive evidence of that action.

[(1) A certified copy of an order of adverse action or a judgment from another jurisdiction relating to an individual's license or privilege to practice nursing in that jurisdiction is prima facie evidence of the matters contained in such order or judgment and is conclusive evidence that the disciplined individual committed the misconduct set forth in the order or judgment.]

[(2) Any individual who seeks to obtain or retain a license or privilege to practice nursing in Texas during the period of discipline imposed by a disciplining jurisdiction, or, in the case of revocation or surrender, prior to licensure reinstatement in the disciplining jurisdiction, must provide sufficient evidence that he/she has good professional character.]

~~{(3) Any individual who seeks to obtain or retain a license or privilege to practice nursing in Texas following the completion of the disciplinary period assessed by a disciplining jurisdiction; or, in the case of revocation or surrender, after the reinstatement of licensure in the disciplining jurisdiction, must provide sufficient evidence that he/she has good professional character.}~~

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 November 27, 2017.

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Jena Abel

Deputy General Counsel

Texas Board of Nursing

Earliest possible date of adoption: January 7, 2018

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



22 TAC §213.28

Introduction

The Texas Board of Nursing (Board) proposes the repeal of existing §213.28, concerning *Licensure of Individuals with Criminal History*. The repeal is being proposed in conjunction with the proposal of new §213.28, which is also being published simultaneously in this issue of the *Texas Register*. The repeal is being proposed under the authority of the Occupations Code §§301.452(b)(3) and (4) and (d); 301.151; 301.1545; 301.4535; 304.0015, Article III, (c)(7) and (8); 53.021; 53.022; 53.023; and 53.025 and is necessary to comply with the adopted recommendations of the Texas Sunset Advisory Commission (Commission) and legislative directives.

Background

The Board was last reviewed by the Commission in 2006-2007 (during the 80th Legislative cycle), and underwent its current review in 2016-2017 (during the 85th Legislative cycle). The Commission adopted several recommendations as a result of its review of the Board. One specific recommendation related to the Board's Guidelines for Criminal Conduct (Guidelines). The Commission found that, although the Occupations Code Chapter 53 requires criminal conduct to directly relate to the duties and responsibilities of the regulated profession, the Board's Guidelines, did not, in all cases, clearly consider the factors required under Chapter 53 or establish a direct relationship between the crimes and the practice of nursing.

As a result, the Commission directed the Board to review its Guidelines to ensure that the Guidelines do not expand beyond those crimes that affect actual nursing practice. The Commission further stated that the Board's rules should not include crimes indicating subjective traits like honesty, trustworthiness, or good professional character if those crimes have not occurred in relation to or reasonably correlate to a nurse's job. The Commission also stated that the Board should seek stakeholder input to revise its rules and adopt new rules by March 1, 2018.

Stakeholder Input

The Board convened and charged its Advisory Committee on Licensure, Eligibility and Discipline (Committee) with reviewing the Commission's recommendations and providing proposed

changes to the Board. The Committee met on May 12, 2017; June 9, 2017; August 11, 2017; and September 15, 2017, to review all of the Commission's recommendations regarding discipline and comply with the Board's charge. The Committee reviewed and discussed the Board's Guidelines at its May, June, and August meetings. The Committee diligently considered each crime listed in the Guidelines and evaluated its relationship to the practice of nursing, focusing on the guidance provided by the Commission. The Committee then identified the crimes that would most likely have an effect on an individual's ability to practice nursing safely or that would most likely pose a risk of harm to patients, employers, or the public. The Committee was able to reach a consensus and make a recommendation to the Board regarding the majority of the crimes listed in the Guidelines. The Committee recommended removing the following crimes from the Guidelines: felony and misdemeanor bail jumping, misdemeanor burglary of vehicle, misdemeanor criminal trespass, misdemeanor deadly conduct, misdemeanor evading arrest, misdemeanor failure to identify, misdemeanor harassment, misdemeanor harboring runaway child, misdemeanor hindering apprehension or prosecution, felony and misdemeanor hindering secured creditors, and felony and misdemeanor unlawful carrying a weapon. The Committee recommended retaining the remaining crimes in the Guidelines, with the exception of the following crimes that the Committee was unable to reach a consensus or make a recommendation regarding: misdemeanor assault; felony bribery; felony criminal mischief; felony criminal non-support; felony hindering apprehension or prosecution; felony interference with child custody; felony money laundering; misdemeanor violation of protective order; and misdemeanor resisting arrest. The Committee also provided general comments regarding proposed changes to Board Rule §213.28.

The Board reviewed and discussed the Commission's final recommendations, the Committee's recommendations; other state licensing entities' rules and guidelines regarding criminal conduct; and Board Staff's recommendations at the October 2017 regularly scheduled Board meeting. In addition to the crimes recommended by the Committee for removal from the Guidelines, the Board determined that several additional crimes needed to be removed from the Guidelines to comply with the statutory mandates of the Nursing Practice Act (NPA) and the Occupations Code Chapter 53 and the Commission's directives. Further, due to the number and extent of changes to the rule text and the Board's Guidelines, the Board determined that a repeal of the existing rule and Guidelines and the proposal of a new rule and Guidelines was appropriate.

Section by Section Overview. The proposed repeal will repeal §213.28 in its entirety.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed repeal will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed repeal is in effect, the anticipated public benefit will be the adoption of new rules that comply with the Commission's recommendations and the statutory mandates of the NPA and the Occupations Code Chapter 53.

There are no anticipated costs of compliance with the proposed repeal. Further, because there are no anticipated costs asso-

ciated with the adoption of this proposal, the Board is not required to comply with the requirements of Tex. Gov't Code. §2001.0045.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposal will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposal because there are no anticipated costs of compliance with the proposal. As such, the Board is not required to prepare a regulatory flexibility analysis.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Tex. Admin. Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed repeal will be in effect: (i) the proposed repeal does not create or eliminate a government program; (ii) implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions, as the proposal does is not expected to have an effect on existing agency positions; (iii) implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board, as the proposal is not expected to have an effect on existing agency positions; (iv) the proposed repeal does not require an increase or decrease in fees paid to the Board; (v) the proposed repeal does not create a new regulation; (vi) the proposal does not expand an existing regulation, but it does repeal an existing regulation; however, it is being proposed simultaneously with a proposed new section that addresses the same regulatory purpose; (vii) the proposed repeal does not increase or decrease the number of individuals subject to the rule's applicability; and (viii) the proposed repeal does not have an effect on the state's economy.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal 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, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on January 7, 2018, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by email to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The repeal is proposed under the authority of the Occupations Code §§301.452(b)(3) and (4) and (d); 301.151; 301.1545; 301.4535; 304.0015, Article III, (c)(7) and (8); 53.021; 53.022; 53.023; and 53.025.

Cross Reference to Statute. The following statutes are affected by this proposal: Occupations Code §§301.452(b)(3) and (4) and (d); 301.151; 301.1545; 301.4535; 304.0015, Article III, (c)(7) and (8); 53.021; 53.022; 53.023; and 53.025.

§213.28. *Licensure of Individuals with Criminal History.*

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 November 27, 2017.

TRD-201704787

Jena Abel

Deputy General Counsel

Texas Board of Nursing

Earliest possible date of adoption: January 7, 2018

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



22 TAC §213.28

Introduction

The Texas Board of Nursing (Board) proposes new §213.28, concerning Licensure of Individuals with Criminal History. The new section is being proposed in conjunction with the repeal of existing §213.28, which is also being published simultaneously in this issue of the *Texas Register*. The new section is being proposed under the authority of the Occupations Code §§301.452(b)(3) and (4) and 301.452(d); 301.151; 301.1545; 301.4535; 304.0015, Article III, (c)(7) and (8); 53.021; 53.022; 53.023; and 53.025 and is necessary to comply with the adopted recommendations of the Texas Sunset Advisory Commission (Commission) and legislative directives.

Background

The Board was last reviewed by the Commission in 2006-2007 (during the 80th Legislative cycle), and underwent its current review in 2016 - 2017 (during the 85th Legislative cycle). The Commission adopted several recommendations as a result of its review of the Board. One specific recommendation related to the Board's Guidelines for Criminal Conduct (Guidelines). The Commission found that, although the Occupations Code Chapter 53 requires criminal conduct to directly relate to the duties and responsibilities of the regulated profession, the Board's Guidelines, did not, in all cases, clearly consider the factors required under Chapter 53 or establish a direct relationship between the crimes and the practice of nursing.

As a result, the Commission directed the Board to review its Guidelines to ensure that the Guidelines do not expand beyond those crimes that affect actual nursing practice. The Commission further stated that the Board's rules should not include crimes indicating subjective traits like honesty, trustworthiness, or good professional character if those crimes have not occurred in relation to or reasonably correlate to a nurse's job. The Commission also stated that the Board should seek stakeholder input to revise its rules and adopt new rules by March 1, 2018.

Stakeholder Input

The Board convened and charged its Advisory Committee on Licensure, Eligibility and Discipline (Committee) with reviewing the Commission's recommendations and providing proposed changes to the Board. The Committee met on May 12, 2017; June 9, 2017; August 11, 2017; and September 15, 2017, to review all of the Commission's recommendations regarding discipline and comply with the Board's charge. The Committee reviewed and discussed the Board's Guidelines at its May, June, and August meetings. The Committee diligently considered each crime listed in the Guidelines and evaluated its relationship to the practice of nursing, focusing on the guidance provided by the Commission. The Committee then identified the crimes that would most likely have an effect on an individual's ability

to practice nursing safely or that would most likely pose a risk of harm to patients, employers, or the public. The Committee was able to reach a consensus and make a recommendation to the Board regarding the majority of the crimes listed in the Guidelines. The Committee recommended removing the following crimes from the Guidelines: felony and misdemeanor bail jumping, misdemeanor burglary of vehicle, misdemeanor criminal trespass, misdemeanor deadly conduct, misdemeanor evading arrest, misdemeanor failure to identify, misdemeanor harassment, misdemeanor harboring runaway child, misdemeanor hindering apprehension or prosecution, felony and misdemeanor hindering secured creditors, and felony and misdemeanor unlawful carrying a weapon. The Committee recommended retaining the remaining crimes in the Guidelines, with the exception of the following crimes that the Committee was unable to reach a consensus or make a recommendation regarding: misdemeanor assault; felony bribery; felony criminal mischief; felony criminal non-support; felony hindering apprehension or prosecution; felony interference with child custody; felony money laundering; misdemeanor violation of protective order; and misdemeanor resisting arrest. The Committee also provided general comments regarding proposed changes to Board Rule 213.28.

The Board reviewed and discussed the Commission's final recommendations, the Committee's recommendations; other state licensing entities' rules and guidelines regarding criminal conduct; and Board Staff's recommendations at the October 2017 regularly scheduled Board meeting. In addition to the crimes recommended by the Committee for removal from the Guidelines, the Board determined that several additional crimes needed to be removed from the Guidelines to comply with the statutory mandates of the Nursing Practice Act (NPA) and the Occupations Code Chapter 53 and the Commission's directives. Further, due to the number and extent of changes to the rule text and the Board's Guidelines, the Board determined that a repeal of the existing rule and Guidelines and the proposal of a new rule and Guidelines was appropriate.

Section by Section Overview

Proposed §213.28(a) sets out the purpose and applicability of the new section, which is similar to the text of the existing rule. The proposed new section also implements the requirements of the Occupations Code §53.025. Under §53.025, the Board is required to issue guidelines stating the reasons why a particular crime is considered to relate to a nursing license and any other criteria that affects the licensing decisions of the Board. The remaining subsections of the rule specify the Board's rationale in this regard.

Proposed §213.28(b) specifies the Board's jurisdiction over criminal conduct. Pursuant to the Occupations Code §301.452(b)(3) and §53.021, an individual is subject to denial of licensure or to disciplinary action for a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony that is directly related to the practice of nursing or for a misdemeanor involving moral turpitude that is directly related to the practice of nursing. The proposed new subsection further specifies that the Board will only consider those crimes that have been adjudicated through agreement or judicial order by a state or federal criminal justice system, and that the Board will not re-litigate the underlying factual basis for the agreement or judicial order when considering the effect of the criminal conduct on an individual's licensure status. This rule text is similar to that already specified in the Board's current Guidelines.

Proposed new §213.28(c) includes the Board's revised Guidelines and specifies that the crimes listed in the Guidelines are considered to be directly related to the practice of nursing by the Board. The proposed new subsection also explains how the Board intends to utilize the Guidelines in its licensing decisions. Due to the variance among state and federal laws, it is virtually impossible to identify all of the crimes that may affect an individual applicant. As a result, the Guidelines reflect the most common or well-known crimes, and the Board expects the vast majority of an individual's criminal history that is reviewed by the Board to fall within those Guidelines. However, the Board does not consider the Guidelines to be an exhaustive listing, and they do not prohibit the Board from considering an offense not specifically listed in the Guidelines. In a matter involving an offense that is not specifically listed in the Guidelines, such as a violation of another state's law, federal law, or the Uniform Code of Military Justice, the Board will consider the conduct by comparing the offense to the crime listed in the Guidelines that contains substantially similar elements. In all situations, however, the offense must meet the requirements of proposed new subsection (b) to be actionable by the Board. This overall approach is also consistent with other licensing entities' rules regarding the evaluation of an individual's past criminal conduct and contains text that is similar to that already specified in the Board's current Guidelines.

Proposed new §213.28(d) describes how the crimes that are listed in the Board's Guidelines are directly related to the practice of nursing. The subsection includes the Board's rationale for several categories of crimes: those involving fraud or theft; those involving sexual misconduct; those involving lying, falsification, and deception; those involving alcohol and drugs; and those involving violence or threatening behavior. In compliance with the Commission's directives and the statutory mandates of the Occupations Code Chapter 53, the Board has specified how each category of crime relates directly to the practice of nursing and identifies the effect it may have on an employer, patient, or member of the public. Based on the Committee's recommendations and consideration of the Commission's directives, the Board has considerably narrowed the number of crimes included in its Guidelines in an effort to ensure that those remaining are only those that have a direct, rational connection to the practice of nursing and affect actual nursing practice.

In the same vein as proposed new §213.28(d), proposed new §213.28(e) discusses additional factors that the Board has considered when determining the connection between the crimes listed in the Guidelines and the practice of nursing. Consistent with the statutory mandates of the Occupations Code §53.022, the Board has considered the nature and seriousness of each of the crimes listed in the Guidelines; the relationship of the crime to the purposes for requiring a license to engage in nursing; the extent to which a license to practice nursing might offer an opportunity to engage in further criminal activity of the same type as that in which the individual previously was involved; and the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities associated with the practice of nursing. The Board has carefully considered each crime listed in the Guidelines and determined that these crimes raise concerns about the propensity of the individual to repeat similar misconduct in the workplace, if provided the opportunity, and that such similar misconduct in the workplace would place vulnerable individuals at risk of exploitation or victimization. As a result, if an individual has committed a crime listed in the Guidelines, the Board will evaluate that conduct to determine if disciplinary action is warranted.

Proposed new §213.28(f) specifies additional conditions under which a crime will be considered to be directly related to the practice of nursing. Specifically, an act will be considered to be directly related to the practice of nursing if the act arose out of the practice of vocational, professional, or advanced practice nursing, as those terms are defined by the NPA; involves a current or former patient; arose out of the practice location of the nurse; involves a healthcare professional with whom the nurse has had a professional relationship; or constitutes a criminal violation of the NPA or another statute regulating another profession in the healing arts that also applies to the individual. These conditions are also consistent with other licensing entities' rules regarding the evaluation of an individual's criminal conduct.

Proposed new §213.28(g) describes how an individual's past criminal conduct will be evaluated by the Board. First, the Board recognizes that an individual may make a mistake, learn from it, and not repeat it in the nursing practice setting. As such, not all criminal conduct will result in disciplinary action, as each case will be evaluated on its own merit to determine if a sanction is warranted. If a sanction is warranted, the Board will utilize the schedule of sanctions set forth in §213.33(e) (relating to Factors Considered for Imposition of Penalties/Sanctions) of this chapter to determine the appropriate level of sanction for each individual case. At a minimum, however, an individual will be required to successfully complete the terms of his/her criminal probation and provide evidence of successful completion to the Board. Further, if an individual's criminal behavior is due to, or associated with, a substance use disorder or a mental health condition, evidence of ongoing sobriety, effective clinical management, and/or appropriate ongoing treatment may be required. And, if an individual's criminal history implicates his/her current fitness to practice, the individual may also be required to meet the requirements of §213.29 (relating to Fitness to Practice) to ensure he/she is safe to practice nursing.

Proposed new §213.28(h) specifies the factors that may be considered by the Board when determining the appropriate sanction, if any, in an eligibility or disciplinary matter involving criminal conduct. These factors are consistent with those required by the Occupations Code §53.023 and include: the nature, seriousness, and extent of the individual's past criminal activity; the age of the individual when the crime was committed; the amount of time that has elapsed since the individual's last criminal activity; the conduct and work activity of the individual before and after the criminal activity; evidence of the individual's rehabilitation or rehabilitative effort while incarcerated or after release; other evidence of the individual's fitness, including letters of recommendation from prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the individual; the sheriff or chief of police in the community where the individual resides; and any other individual in contact with the convicted individual; a record of steady employment; support of the individual's dependents; a record of good conduct; successful completion of probation/community supervision or early release from probation/community supervision; payment of all outstanding court costs, supervision fees, fines, and restitution ordered; the actual damages, physical or otherwise, resulting from the criminal activity; the results of an evaluation performed pursuant to the Occupations Code §301.4521 and §213.33(k) and (l) of this chapter; evidence of remorse and having learned from past mistakes; evidence of current support structures that will prevent future criminal activity; evidence of current ability to practice nursing in accordance with the NPA, Board rules, generally accepted standards of nursing; and other

laws that affect nursing practice; and any other matter that justice requires.

Proposed new §213.28(i) reiterates that the Board may require or request an evaluation to assist it in its determination regarding an individual's past criminal conduct. Pursuant to Texas Occupations Code §301.4521 and §213.33(k) and (l) of this chapter, the Board may request or require an individual to undergo an evaluation with a Board-approved evaluator to better determine whether the individual is safe to practice nursing and is able to comply with the NPA, Board rules, and generally accepted standards of nursing. Further, if an individual's criminal behavior is due to, or associated with, a substance use disorder or a mental health condition, evidence of ongoing sobriety, effective clinical management, and/or appropriate ongoing treatment may also be required. This subsection contains text that is similar to that already specified in the Board's current rule.

Proposed new §213.28(j) specifies how the Board will review criminal behavior that is determined to be a youthful indiscretion. The Board will evaluate the following factors when reviewing criminal behavior to determine if it may be classified as a youthful indiscretion: the offense was not classified as a felony; absence of criminal plan or premeditation; presence of peer pressure or other contributing influences; absence of adult supervision or guidance; evidence of immature thought process/judgment at the time of the activity; evidence of remorse; evidence of restitution to both victim and community; evidence of current maturity and personal accountability; absence of subsequent criminal conduct; evidence of having learned from past mistakes; evidence of current support structures that will prevent future criminal activity; and evidence of current ability to practice nursing in accordance with the NPA, Board rules, generally accepted standards of nursing, and other laws that affect nursing practice. If criminal behavior is deemed to be a youthful indiscretion, a sanction will not be imposed. This subsection contains text that is similar to that already specified in the Board's current rule.

Proposed new §213.28(k) reiterates several statutory bars to licensure. First, under the Occupations Code §301.4535, the Board is required under §301.4535(b) to deny an individual initial licensure or licensure renewal and to revoke an individual's nursing license or privilege to practice nursing in Texas upon a final conviction or a plea of guilty or nolo contendere for a criminal offense specified in §301.4535(a). Further, an individual is not eligible for initial licensure or licensure endorsement in Texas or for licensure reinstatement before the fifth anniversary of the date the individual successfully completed and was dismissed from community supervision or parole for an offense specified in §301.4535(a). Second, pursuant to Texas Occupations Code §53.021(b), an individual's license or multistate licensure privilege to practice nursing in Texas will be revoked by operation of law upon the individual's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision. This subsection contains text that is similar to that already specified in the Board's current rule.

Proposed new §213.28(l) explains how the Board will utilize an individual's arrest information. The fact that an individual has been arrested will not be used as grounds for sanction. The Board may, however, utilize evidence ascertained through the Board's own investigation from information contained in the arrest record if the underlying conduct suggests actions violating the NPA or Board rules. This subsection is consistent with the

Occupations Code §301.452(d) and contains text that is similar to that already specified in the Board's current rule.

Proposed new §213.28(m) provides that the Executive Director is authorized to close an eligibility file when the individual seeking licensure has failed to respond to a request for information, a proposed eligibility order, or denial of licensure within 60 days of the request for information, proposed eligibility order, or denial. This subsection contains text that is similar to that already specified in the Board's current rule.

Proposed new §213.28(n) explains how an individual's criminal history may affect his/her ability to hold a multistate licensure privilege to practice nursing in Texas. Pursuant to the Occupations Code §304.0015, Article III, (c)(7), which was added by House Bill 2950, enacted by the 85th Texas Legislature, an individual will not be eligible to hold a multistate licensure privilege if the individual has been convicted or found guilty, or has entered into an agreed disposition, of a felony offense under applicable state or federal criminal law. Further, pursuant to (c)(8), an individual will not be eligible to hold a multistate licensure privilege if the individual has been convicted or found guilty, or has entered into an agreed disposition, of a misdemeanor offense related to the practice of nursing, as determined on a case-by-case basis by the Board.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed new section will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed new section is in effect, the anticipated public benefit will be the adoption of rules that comply with the Commission's recommendations and the statutory mandates of the NPA and the Occupations Code Chapter 53.

There are no anticipated costs of compliance with the proposal. The proposal does not implement new requirements, and in some cases, removes existing restrictions. Further, although a new section is being proposed for adoption, many of the provisions in the new section are contained within the Board's current rule text, and the Board does not anticipate a marked change in licensee compliance with the new section. Further, because there are no anticipated costs associated with the adoption of this proposal, the Board is not required to comply with the requirements of Texas Government Code. §2001.0045. Even if costs were anticipated as a result of the implementation of the proposal, the Board is exempted from compliance with §2001.0045 under the provisions of §2001.0045(c)(9), as the proposal is a direct result of the Commission's recommendations and is necessary to implement the statutory mandates of HB 2950.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposal will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposal because there are no anticipated costs of compliance with the proposal. As such, the Board is not required to prepare a regulatory flexibility analysis.

Government Growth Impact Statement. The Board is required, pursuant to Texas Government Code §2001.0221 and 34 Texas Administrative Code §11.1, to prepare a government growth im-

pact statement. The Board has determined for each year of the first five years the proposed new section will be in effect:

- (i) the proposal does not create or eliminate a government program;
- (ii) implementation of the proposal does not require the creation of new employee positions or the elimination of existing employee positions, as the proposal does is not expected to have an effect on existing agency positions;
- (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board, as the proposal is not expected to have an effect on existing agency positions;
- (iv) the proposal does not require an increase or decrease in fees paid to the Board;
- (v) the proposal does not create a new regulation since it essentially amends a regulation that currently exists and is being adopted simultaneously with the current regulations' repeal;
- (vi) the proposal does not expand or repeal an existing regulation;
- (vii) the proposal does not increase or decrease the number of individuals subject to the rule 's applicability; and
- (viii) the proposal does not have an effect on the state's economy.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal 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, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on January 7, 2018, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The proposal is proposed under the authority of the Occupations Code §§301.452(b)(3) and (4) and (d); 301.151; 301.1545; 301.4535; 304.0015, Article III, (c)(7) and (8); 53.021; 53.022; 53.023; and 53.025.

Cross Reference To Statute. The following statutes are affected by this proposal: Occupations Code §§301.452(b)(3) and (4) and (d); 301.151; 301.1545; 301.4535; 304.0015, Article III, (c)(7) and (8); 53.021; 53.022; 53.023; and 53.025.

§213.28. Licensure of Individuals with Criminal History.

(a) Purpose and Applicability. This section establishes the criteria utilized by the Board in determining the effect of criminal history on nursing licensure and eligibility for nursing licensure and implements the requirements of Texas Occupations Code §53.025. This section applies to all individuals seeking to obtain or retain a license or multistate licensure privilege to practice nursing in Texas.

(b) An individual is subject to denial of licensure or to disciplinary action for a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony that is directly related to the practice of nursing or for a misdemeanor involving moral turpitude that is directly related to the practice of nursing

(collectively referred to as *crimes* hereafter). This section applies to crimes that have been adjudicated through agreement or judicial order by a state or federal criminal justice system, without re-litigation of the underlying factual basis for the agreement or judicial order.

(c) The Board considers the crimes listed in the attached Criminal Guidelines (Guidelines) to be directly related to the practice of nursing. The Guidelines reflect the most common or well known crimes. The vast majority of an individual's criminal history that is reviewed by the Board will fall within the Guidelines. However, the Guidelines are not intended to be an exhaustive listing, and they do not prohibit the Board from considering an offense not specifically listed in the Guidelines. In matters involving an offense that is not specifically listed in the Guidelines, such as a violation of another state's law, federal law, or the Uniform Code of Military Justice, a determination shall be made by comparing that offense to the crime listed in the Guidelines that contains substantially similar elements. The offense must meet the requirements of subsection (b) of this section to be actionable.

Figure: 22 TAC §213.28(c)

(d) The Board has determined that the crimes listed in the Guidelines in subsection (c) of this section are directly related to the practice of nursing for the following reasons.

(1) Nursing is a unique profession. Nurses practice autonomously in a wide variety of settings and provide care to individuals who are, by virtue of their illness or injury, physically, emotionally, and financially vulnerable. These individuals include the elderly; children; individuals with mental disorders; sedated and anesthetized patients; individuals with mental or cognitive disorders; and disabled and immobilized individuals. Nurses that engage in criminal conduct potentially place patients, healthcare employers, and the public at future risk of harm.

(2) Crimes involving fraud or theft. Nurses often have unfettered access to individuals' privileged information, financial information, and valuables, including medications, money, jewelry, credit cards/checkbook, and sentimental items. Nurses also provide around the clock care, working night and weekend shifts at hospitals, long term care facilities, nursing homes, assisted living facilities, and in home health and home-like settings, where there is often no direct supervision of the nurse. Patients in these settings are particularly vulnerable to the unethical, deceitful, and illegal conduct of a nurse. When a nurse has engaged in criminal behavior involving fraud or theft in the past, the Board is mindful that similar misconduct may be repeated in these nursing settings, thereby placing patients, healthcare employers, and the public at risk.

(3) Crimes involving sexual misconduct. Nurses also frequently provide care to partially clothed or fully undressed individuals, who are particularly vulnerable to exploitation. Due to the intimate nature of nursing care, professional boundaries in the nurse-patient relationship are extremely important. When a nurse has engaged in criminal behavior involving any type of sexual misconduct in the past, the Board is mindful that similar misconduct may be repeated in nursing settings. Such conduct may involve touching intimate body parts when the touch is not necessary for care, voyeurism, exposure of body parts when not necessary, and surreptitious touching. As such, the Board considers crimes involving any type of sexual misconduct to be highly relevant to an individual's ability to provide safe nursing care..

(4) Crimes involving lying, falsification, and deception. Nurses are expected to accurately and honestly report and record information in a variety of sources, such as medical records, pharmacy records, billing records, nursing notes, and plans of care, as well as report errors in their own nursing practice. When a nurse has engaged

in criminal behavior involving lying, falsification, or deceptive conduct, the Board is mindful that similar misconduct may be repeated in nursing settings, thereby placing patients, healthcare employers, and the public at risk.

(5) Crimes involving drugs and alcohol.. Nurses have a duty to their patients to provide safe, effective nursing care and to be fit to practice. Nurses who have a substance use disorder may exhibit impairment in both cognitive and motor functioning. A nurse affected by a substance use disorder may be unable to accurately assess patients, make appropriate judgments, or intervene in a timely and appropriate manner. This danger may be heightened when the nurse works in an autonomous setting where other healthcare providers are not present to provide interventions for the patient. As such, the Board considers crimes related to the use or possession of drugs or alcohol to be highly relevant to a nurse's fitness to practice.

(6) Crimes involving violence or threatening behavior. Nurses provide care to the most vulnerable of populations, including individuals who often have no voice of their own and cannot advocate for themselves. Further, patients are dependent on the nurse-patient relationship for their daily care. When a nurse has engaged in violent or threatening criminal behavior in the past, the Board is mindful that patients may be at risk for similar behavior in a healthcare setting. As such, the Board considers crimes involving violence and threatening behavior to be highly relevant to a nurse's fitness to practice.

(e) The Board has considered the nature and seriousness of each of the crimes listed in the Guidelines in subsection (c) of this section, the relationship of the crime to the purposes for requiring a license to engage in nursing; the extent to which a license to practice nursing might offer an opportunity to engage in further criminal activity of the same type as that in which the individual previously was involved; and the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities associated with the practice of nursing. The Board has determined that each crime listed in the Guidelines in subsection (c) of this section raises concerns about the propensity of the individual to repeat similar misconduct in the workplace, if provided the opportunity. The Board has also determined that similar misconduct in the workplace would place vulnerable individuals at risk of exploitation or victimization. As a result, if an individual has committed a crime listed in the Guidelines in subsection (c) of this section, the Board will evaluate that conduct to determine if disciplinary action is warranted.

(f) Additionally, a crime will be considered to be directly related to the practice of nursing if the act:

(1) arose out of the practice of vocational, professional, or advanced practice nursing, as those terms are defined by the Nursing Practice Act (NPA);

(2) involves a current or former patient;

(3) arose out of the practice location of the nurse;

(4) involves a healthcare professional with whom the nurse has had a professional relationship; or

(5) constitutes a criminal violation of the NPA or another statute regulating another profession in the healing arts that also applies to the individual.

(g) Sanction. Not all criminal conduct will result in a sanction. The Board recognizes that an individual may make a mistake, learn from it, and not repeat it in the nursing practice setting. As such, each case will be evaluated on its own merits to determine if a sanction is warranted. If multiple crimes are present in a single case, a more severe sanction may be considered by the Board pursuant to Texas Occupa-

tions Code §301.4531. If a sanction is warranted, the Board will utilize the schedule of sanctions set forth in §213.33(e) (relating to Factors Considered for Imposition of Penalties//Sanctions) of this chapter. At a minimum, an individual will be required to successfully complete the terms of his/her criminal probation and provide evidence of successful completion to the Board. If an individual's criminal behavior is due to, or associated with, a substance use disorder or a mental health condition, evidence of ongoing sobriety, effective clinical management, and/or appropriate ongoing treatment may be required. Further, if an individual's criminal history implicates his/her current fitness to practice, the individual may also be required to meet the requirements of §213.29 (relating to Fitness to Practice) to ensure he/she is safe to practice nursing.

(h) Factors. The following factors will be considered when determining the appropriate sanction, if any, in eligibility and disciplinary matters involving criminal conduct:

(1) the nature, seriousness, and extent of the individual's past criminal activity;

(2) the age of the individual when the crime was committed;

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

(4) the conduct and work activity of the individual before and after the criminal activity;

(5) evidence of the individual's rehabilitation or rehabilitative effort while incarcerated or after release;

(6) other evidence of the individual's fitness, including letters of recommendation from prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the individual; the sheriff or chief of police in the community where the individual resides; and any other individual in contact with the convicted individual;

(7) a record of steady employment;

(8) support of the individual's dependents;

(9) a record of good conduct;

(10) successful completion of probation/community supervision or early release from probation/community supervision;

(11) payment of all outstanding court costs, supervision fees, fines, and restitution ordered;

(12) the actual damages, physical or otherwise, resulting from the criminal activity;

(13) the results of an evaluation performed pursuant to Texas Occupations Code §301.4521 and §213.33(k) and (l) of this chapter;

(14) evidence of remorse and having learned from past mistakes;

(15) evidence of current support structures that will prevent future criminal activity;

(16) evidence of current ability to practice nursing in accordance with the NPA, Board rules, generally accepted standards of nursing; and other laws that affect nursing practice; and

(16) any other matter that justice requires.

(i) Evaluations. Pursuant to Texas Occupations Code §301.4521 and §213.33(k) and (l) of this chapter, the Board may request or require an individual to undergo an evaluation with a

Board-approved evaluator to better determine whether the individual is safe to practice nursing and is able to comply with the NPA, Board rules, and generally accepted standards of nursing. If an individual's criminal behavior is due to, or associated with, a substance use disorder or a mental health condition, evidence of ongoing sobriety, effective clinical management, and/or appropriate ongoing treatment may also be required.

(j) Youthful Indiscretions. Some criminal behavior may be deemed a youthful indiscretion under this paragraph. In that event, a sanction will not be imposed. The following criteria will be considered in making such a determination:

(1) the offense was not classified as a felony;

(2) absence of criminal plan or premeditation;

(3) presence of peer pressure or other contributing influences;

(4) absence of adult supervision or guidance;

(5) evidence of immature thought process/judgment at the time of the activity;

(6) evidence of remorse;

(7) evidence of restitution to both victim and community;

(8) evidence of current maturity and personal accountability;

(9) absence of subsequent criminal conduct;

(10) evidence of having learned from past mistakes;

(11) evidence of current support structures that will prevent future criminal activity; and

(12) evidence of current ability to practice nursing in accordance with the NPA, Board rules, generally accepted standards of nursing, and other laws that affect nursing practice.

(k) Bars to Licensure.

(1) Texas Occupations Code §301.4535. The Board is required under Texas Occupations Code §301.4535(b) to deny an individual initial licensure or licensure renewal and to revoke an individual's nursing license or privilege to practice nursing in Texas upon a final conviction or a plea of guilty or nolo contendere for a criminal offense specified in §301.4535(a). Further, an individual is not eligible for initial licensure or licensure endorsement in Texas or for licensure reinstatement before the fifth anniversary of the date the individual successfully completed and was dismissed from community supervision or parole for an offense specified in §301.4535(a).

(2) Imprisonment. Pursuant to Texas Occupations Code §53.021(b), an individual's license or multistate licensure privilege to practice nursing in Texas will be revoked by operation of law upon the individual's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(l) Arrests. The fact that an individual has been arrested will not be used as grounds for sanction. If, however, evidence ascertained through the Board's own investigation from information contained in the arrest record regarding the underlying conduct suggests actions violating the NPA or Board rules, the Board may consider such evidence.

(m) The Executive Director is authorized to close an eligibility file when the individual seeking licensure has failed to respond to a request for information, a proposed eligibility order, or denial of licen-

sure within 60 days of the request for information, proposed eligibility order, or denial.

(n) Pursuant to the Nurse Licensure Compact, Texas Occupations Code §304.0015, Article III, (c)(7), an individual will not be eligible to hold a multistate licensure privilege if the individual has been convicted or found guilty, or has entered into an agreed disposition, of a felony offense under applicable state or federal criminal law. Further, pursuant to the Nurse Licensure Compact, Texas Occupations Code §304.0015, Article III, (c)(8), an individual will not be eligible to hold a multistate licensure privilege if the individual has been convicted or found guilty, or has entered into an agreed disposition, of a misdemeanor offense related to the practice of nursing, as determined on a case-by-case basis by the 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 November 27, 2017.

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Deputy General Counsel

Texas Board of Nursing

Earliest possible date of adoption: January 7, 2018

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



CHAPTER 214. VOCATIONAL NURSING EDUCATION

22 TAC §214.9

Introduction

The Texas Board of Nursing (Board) proposes amendments to §214.9, concerning Program of Study. The amendments are proposed under the authority of Texas Occupations Code §301.151 and §301.157 and are necessary to enhance the flexibility of vocational nursing programs.

Background

The Advisory Committee on Education (ACE) is a standing advisory committee of the Board and advises the Board on education and practice issues that have or may have an impact on the regulation of nursing education in Texas. The Board charged ACE at its July 2017 meeting with studying possible rule changes related to required hours for instruction and clinical practice in Vocational Nursing Education (VN) programs and recommending any necessary changes.

At the September 25, 2017, meeting of ACE, ACE voted to recommend amending §214.9 to remove the required minimum supervised clinical hour requirement for vocational nursing programs from the rule. ACE based its recommendation on the following factors.

First, a review of other state boards of nursing showed that 66% have no minimum number of hours for vocational nursing educational programs and 62% have no minimum clinical hour requirement. Second, the majority of states have no minimum required hours for supervised clinical practice in their nursing educational programs. ACE found that there was no correlation between pass rates on the National Council Licensure Examination for

Practical Nurses (NCLEX-PN® Examination) and having a minimum supervised clinical practice hour requirement in rule. Further, many states without clinical practice hour requirements had higher pass rates on the National Council Licensure Examination for Practical Nurses (NCLEX-PN® Examination).

In addition to these factors, ACE also noted that eliminating a prescribed number of hours from the rule could allow additional innovation in VN programs and could allow VN programs to structure their programs in a way that they believe is best suited to producing competent graduates. ACE also noted that the proposed amendments may reduce competition for clinical practice areas for students, which may lead to a higher quality clinical educational experience.

Section by Section Overview

The current rule requires a minimum of one thousand three hundred and ninety-eight (1,398) clock hours for a VN program, which includes five hundred and fifty-eight (558) hours for classroom instruction and eight hundred and forty (840) hours for clinical practice. The rule also currently defines clinical hours for use in calculating those hours to meet the threshold of eight hundred and forty (840) clinical hours. The proposed amendments remove the requirement of eight hundred and forty (840) clinical hours from the rule and remove the mechanism of calculating those hours. Under the proposal, the hourly requirement is replaced with a suggested ratio of contact hours for classroom and clinical learning experiences. The suggested ratio is one (1) contact hour of didactic to three (3) contact hours of related clinical learning experiences.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be additional flexibility in VN education programs to design their program to best prepare their students to pass the National Council Licensure Examination for Practical Nurses (NCLEX-PN® Examination) and prepare safe practitioners in the state of Texas.

There are no anticipated costs of compliance with the proposal, as the proposed amendments do not implement new requirements or restrictions. Rather, the amendments remove existing restrictions from VN education programs by allowing them to design their program in the way that they believe is most efficient and best prepares their students. Further, this amendment does not require any departure from the current curriculum for nursing schools. This amendment merely offers an additional option for nursing education programs who choose to exercise it. As there are no anticipated required costs associated with the adoption of this proposal, the Board is not required to comply with the requirements of Tex. Gov't Code. §2001.0045.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposed amendments because as the Board has not added any new requirements with which programs must comply. In fact, under these amendments, programs do not have to make any changes to their current structure of clinical and

didactic education. The proposal merely provides an option for schools who choose to do so. As such, the Board is not required to prepare a regulatory flexibility analysis.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Tex. Admin. Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) implementation of the proposal does not require the creation of new employee positions or the elimination of existing employee positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board; (iv) the proposal does not require an increase or decrease in fees paid to the Board; (v) the proposal does not create a new regulation; (vi) the proposal does not expand, limit, or repeal an existing regulation; (vii) the proposal does not increase or decrease the number of individuals subject to the rule's applicability; and (viii) the proposal does not have an effect on the state's economy.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal 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, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on January 7, 2018 to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the authority of the Occupations Code §301.151 and related §301.157.

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.157(b)(3) authorizes the Board to prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses.

Cross Reference To Statute. The following statutes are affected by this proposal:

Rule: §214.9

Statute: §301.151 and §301.157

§214.9. *Program of Study.*

(a) The program of study shall include both didactic and clinical learning experiences and shall be:

(1) at least the equivalent of one (1) academic year and shall not exceed two (2) calendar years [a minimum of 1,398 clock

hours: 558 hours for classroom instruction and 840 hours for clinical practice];

(2) - (9) (No change.)

(b) (No change.)

(c) Instruction shall include, but not be limited to: organized student/faculty interactive learning activities, formal lecture, audiovisual presentations, nursing skills laboratory instruction and demonstration, simulated laboratory instruction, and faculty-supervised, hands-on patient care clinical learning experiences.

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

(3) Hours in clinical learning experiences shall be sufficient to meet program of study requirements [with a minimum of 840 hours]. There shall be a rationale for the ratio of contact hours assigned to classroom and clinical learning experiences. The suggested ratio is one (1) contact hour of didactic to three (3) contact hours of related clinical learning experiences.

(4) Clinical practice learning experiences shall include actual hours of practice in nursing skills and computer laboratories; simulated clinical experiences; faculty supervised hands-on clinical care; clinical conferences; and observation experiences [for the purpose of calculating the hours for clinical learning experiences in the curriculum]. Observation experiences provide supplemental learning experiences that meet specific learning objectives.

(5) - (9) (No change.)

(d) - (m) (No change.)

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

Filed with the Office of the Secretary of State on November 27, 2017.

TRD-201704797

John Vanderford

Assistant General Counsel

Texas Board of Nursing

Earliest possible date of adoption: January 7, 2018

For further information, please call: (512) 305-6879



CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.2

Introduction

The Texas Board of Nursing (Board) proposes amendments to §217.2, concerning Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its Territories or Possessions.

At the April 2017 quarterly Board meeting, the Board charged the Advisory Committee on Education (ACE) to: (1) advise on the development of rules to define substantially equivalent education standards for the purpose of ensuring out-of-state nursing education programs are substantially equivalent to Board standards; and (2) to advise on the development of rules to provide a clear pathway to initial licensure for graduates of out-of-state programs the Board determines are not substantially equivalent

to Board standards for Texas programs. These charges were the result of the Sunset Advisory Commission's (Commission) adopted recommendations, which were codified in House Bill (HB) 2950, effective September 1, 2017.

ACE met on June 22, 2017, July 25, 2017, and September 25, 2017, to consider the Board's charges. ACE discussed and adopted recommendations for the definition of a substantially equivalent program for both vocational and professional nursing programs. ACE members also discussed and adopted recommendations for a pathway to licensure for applicants who do not meet those definitions.

In reaching its recommendations, ACE discussed several potential pathways to licensure. First, ACE considered requiring an applicant to complete courses at an approved Texas program to fill in any gaps of education an applicant may be missing that would prevent him/her from having a substantially equivalent program. Ultimately, ACE disregarded this as a viable option because it would likely be too arduous for any applicant graduating from a clinical competency assessment program which does not have integrated supervised clinical experiences. In such a situation, the individual would likely be required to complete an entire nursing program, since in Texas, the didactic and clinical portions of the program are integrated.

ACE then considered two other options, which it ultimately recommended to the Board. First, if an applicant is a graduate of a clinical competency assessment program, the applicant may complete precepted hours in an employment setting. Second, the applicant may complete a course at Texas program designed to assess and improve skills for applicants who are graduates of clinical competency assessment programs. In order for the applicant to be able to complete either of these options, however, the individual must obtain a provisional license. The applicant must also pass the National Council Licensure Examination for Registered Nurses (NCLEX-RN® Examination) before obtaining the provisional license to complete the clinical practice hours necessary to comply with the adopted recommendations of the Commission and legislative directives.

A third option was also discussed by ACE, and ultimately approved by the Board, that would allow an applicant to complete courses at an approved Texas program. This option would ensure that any applicant could remedy gaps in his/her education by receiving formalized education in a Texas nursing education program.

The Board reviewed and discussed the Commission's final recommendations, the Committee's recommendations; and Board Staff's recommendations at the October 2017 regularly scheduled Board meeting, and approved the proposal for publication in the *Texas Register* for public comment.

Section by Section Overview

HB 2950 requires the Board to develop rules, with stakeholder input from ACE, defining substantially equivalent standards to be used to recognize out-of-state programs and to provide a path to initial licensure for graduates of out-of-state programs that are determined not to be substantially equivalent to Board standards for Texas programs. The amendments flesh out these areas of substantial equivalence by providing a definition of what would be considered a substantially equivalent program.

A substantially equivalent Registered Nursing program must: be approved by a state governmental entity which awards a nursing diploma or degree upon graduation; include general educa-

tion courses providing a sound foundation for nursing education for the level of preparation; include didactic content and supervised clinical learning experiences in medical-surgical, maternal/child health, pediatrics, geriatrics, and mental health nursing that teach students to use a systematic approach to clinical decision-making and safe patient care across the life span; and for baccalaureate degree nursing programs, courses must also include courses in community, research, and leadership.

A substantially equivalent vocational nursing program must be approved by a governmental entity and must provide a certificate, degree, or diploma upon completion. The nursing courses must include didactic and supervised learning clinical experiences in medical-surgical, maternal/child health, pediatrics, geriatrics, and mental health nursing that teach students to use a systematic approach to clinical decision-making and safe patient care across the life span. These programs must also include support courses providing a sound foundation for nursing education for the level of preparation.

The amendments incorporate the statutory scheme in HB 2950, which deems clinical assessment competency programs to be equivalent as long as they meet the applicable requirements of the statute. The amendments also address several pathways to licensure for an applicant who does not have substantially equivalent education. If a nurse has been found not to have substantially equivalent education, the amendments require the nurse to pass the National Council Licensure Examination for Registered Nurses (NCLEX-RN® Examination) to ensure they have the basic knowledge and skills to practice safely. Once a nurse has passed the NCLEX, they are eligible to receive a provisional license which will allow them to provide supervised patient care. An applicant may also enroll in a Texas program to fill in the gaps that prevented the applicant from receiving a substantially equivalent education. The applicant may also enter into a Texas program which could design a program specifically for the individual's gaps in education, such as a lack of supervised clinical assessments, or the applicant may work in a supervised practice setting for five hundred (500) hours under a preceptor, who would then be able to assess and sign off on the competency of that nurse to practice.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be an increase in parity and consistency among nurses educated outside of Texas and nurses educated in Texas. Further, the proposed amendments provide several options for nurses lacking a substantially equivalent education to be able to become licensed in Texas.

The proposed rule may result in some potential costs to applicants who apply for licensure by examination but do not have a substantially equivalent education to a Texas educated nurse. In these situations, there are multiple potential pathways for the individual to utilize. As the Board is not able to regulate the price charged by nursing educational programs or any price charged by preceptors in an employment setting, the Board cannot state with certainty the precise amount programs will charge. However, the applicant is free to choose the most economical and feasible of these pathways. Further, any costs associated with the proposal are the direct result of the implementation of

the statutory mandates of HB 2950. Further, although there may be associated costs of compliance with the proposal for some individuals, the Board is exempted from compliance with the Government Code §2001.0045 under the provisions of §2001.0045(c)(9), as the proposal is a direct result of the Commission's recommendations and is necessary to implement the statutory mandates of HB 2950.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. The Government Code §2006.002(c) and (f) require, that if a proposed rule may have an economic impact on small businesses or micro businesses, state agencies must prepare, as part of the rulemaking process, an economic impact statement that assesses the potential impact of the proposed rule on these businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule.

The Government Code §2006.001(1) defines a micro business as a legal entity, including a corporation, partnership, or sole proprietorship that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has not more than 20 employees. The Government Code §2006.001(2) defines a small business as a legal entity, including a corporation, partnership, or sole proprietorship, that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has fewer than 100 employees or less than \$6 million in annual gross receipts. Each of the elements in §2006.001(1) and §2006.001(2) must be met in order for an entity to qualify as a micro business or small business.

As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposal because no individual, Board regulated entity, or other entity required to comply with the proposal meets the definition of a small or micro business under the Government Code §2006.001(1) or (2). The only entities subject to or affected by the proposal are individual applicants. These individuals do not qualify as a micro business or small business under the Government Code §2006.001(1) or (2). Therefore, in accordance with the Government Code §2006.002(c) and (f), the Board is not required to prepare a regulatory flexibility analysis.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Tex. Admin. Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) implementation of the proposal does not require the creation of new employee positions or the elimination of existing employee positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board; (iv) the proposal does not require an increase or decrease in fees paid to the Board; (v) the proposal does not create a new regulation, but does implement several new regulatory options for individuals, as a result of the mandates of HB 2950; (vi) the proposal does not expand, limit, or repeal an existing regulation; (vii) the proposal does not increase or decrease the number of individuals subject to the rule's applicability; and (viii) the proposal does not have an effect on the state's economy.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal 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, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on January 7, 2018 to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the authority of the Occupations Code §301.151 and §301.157(d-4), (d-8), (d-9), (d-11), and (d-12).

Cross Reference To Statute. The following statutes are affected by this proposal: the Occupations Code §301.151 and §301.157(d-4), (d-8), (d-9), (d-11), and (d-12).

§217.2. Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions.

(a) All applicants for initial licensure by examination shall:

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

(4) graduate from a Texas nursing program or a program with substantially equivalent education standards to a Texas approved nursing program as defined below.

(A) A professional nursing education program operated in another state may be determined to have substantially equivalent education standards to a Texas approved nursing program if:

(i) the program is approved by a state board of nursing or other governmental entity to offer a pre-licensure professional nursing program of study that awards a nursing diploma or degree upon completion;

(ii) the program includes general education courses providing a sound foundation for nursing education for the level of preparation;

(iii) the program's nursing courses include didactic content and supervised clinical learning experiences in medical-surgical, maternal/child health, pediatrics, geriatrics, and mental health nursing that teach students to use a systematic approach to clinical decision-making and safe patient care across the life span; and

(iv) for baccalaureate degree nursing programs, nursing courses must also include didactic content and supervised clinical learning experiences, as appropriate, in community, research, and leadership.

(B) A vocational nursing education program operated in another state may be determined to have substantially equivalent education standards to a Texas approved nursing program if:

(i) the program is approved by a state board of nursing or other governmental entity to offer a pre-licensure vocational/practical nursing program of study that awards a vocational/practical nursing certificate, diploma, or degree upon completion;

(ii) the program's nursing courses include didactic and supervised clinical learning experiences in medical-surgical, maternal/child health, pediatrics, geriatrics, and mental health nursing that teach students to use a systematic approach to clinical decision-making and safe patient care across the life span; and

(iii) the program includes support courses providing a sound foundation for nursing education for the level of preparation.

(C) A clinical competency assessment program shall be deemed substantially equivalent to a Texas approved nursing program while compliant with Tex. Occ. Code §301.157(d-8) and (d-9). A clinical competency assessment program will be deemed to not be substantially equivalent to a Texas approved nursing program if the program fails to meet applicable requirements of Tex. Occ. Code §301.157(d-11) and (d-12).

(D) If an applicant does not have substantially equivalent education under this paragraph, the applicant may become eligible for licensure if the applicant enrolls in an approved Texas program and completes the necessary educational requirements.

(E) If an applicant for licensure as a registered nurse has completed a clinical competency assessment program, the Board may issue a provisional license to the applicant once the applicant has passed the National Council Licensure Examination for Registered Nurses (NCLEX-RN® Examination). The applicant will be eligible for full licensure if the applicant completes the requirements of clause (i) or (ii) below:

(i) The applicant completes 500 hours of clinical practice under the direct supervision of an approved preceptor. The applicant, prior to beginning practice, must submit the name and license number of a potential preceptor for Board approval. After completion of 500 hours of clinical practice under direct supervision of the approved preceptor and the preceptor's signature that the applicant is competent and safe to practice nursing, the applicant may be eligible for full licensure.

(ii) The applicant completes an educational program at an approved Texas program which is designed to assess and improve clinical skills for applicants who have not completed supervised clinical experiences in their prior educational program. The applicant must seek and receive the Board's approval prior to entering into the program to ensure that the program will allow the applicant may be eligible for full licensure. The applicant must provide the Board evidence of completion of the approved program.

~~[(4) Licensed vocational nurse applicants:]~~

~~[(A) must hold a high school diploma issued by an accredited secondary school or equivalent educational credentials as established by the General Education Development Equivalency Test (GED);]~~

~~[(B) who have graduated from another U.S. jurisdiction's nursing education program must satisfactorily have completed curriculum comparable to the curriculum requirements for graduates of board-approved vocational nurse education programs.]~~

~~(5) - (6) (No change.)~~

~~(b) - (f) (No change.)~~

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

Filed with the Office of the Secretary of State on November 27, 2017.

TRD-201704801

John Vanderford
Assistant General Counsel
Texas Board of Nursing
Earliest possible date of adoption: January 7, 2018
For further information, please call: (512) 305-6879



22 TAC §217.12

Introduction

The Texas Board of Nursing (Board) proposes amendments to §217.12, concerning Unprofessional Conduct. The amendments are proposed under the authority of the Occupations Code §301.151 and §301.452(b)(10) and (e), as amended by House Bill (HB) 2950, effective September 1, 2017, and are necessary to comply with the adopted recommendations of the Texas Sunset Advisory Commission (Commission) and legislative directives.

Background

The Board was last reviewed by the Commission in 2006-2007 (during the 80th Legislative cycle), and underwent its current review in 2016-2017 (during the 85th Legislative cycle). The Commission adopted several recommendations as a result of its review of the Board. One specific recommendation concerned the Board's definition of unprofessional conduct. The Commission found that the statutory provision in the Nursing Practice Act (NPA) related to unprofessional conduct and the associated Board rule defining the term included broad and subjective language that extended the Board's reach beyond the practice of nursing. The Commission further found that the relationship between unprofessional conduct and the practice of nursing were sometimes tenuous, as personal issues, such as criminal violations, in a nurse's home life did not necessarily indicate how a nurse would act at work. As a result, the Commission re-iterated that the Board's application of unprofessional conduct should be limited to the practice of nursing and recommended that the Board revise its rules regarding unprofessional conduct to remove any subjective language or requirements not specifically related to the practice of nursing. Further, the Commission recommended that the Board seek stakeholder input to revise the rules and adopt new rules by March 1, 2018. The Commission's recommendations were codified in HB 2950.

Stakeholder Input

The Board convened and charged its Advisory Committee on Licensure, Eligibility and Discipline (Committee) with reviewing the Commission's recommendations and providing proposed changes to the Board. The Committee met on May 12, 2017; June 9, 2017; August 11, 2017; and September 15, 2017, to review all of the Commission's recommendations regarding discipline and comply with the Board's charge. The Committee reserved the meeting on September 15, 2017, to review and discuss the Board's unprofessional conduct rule. However, the Committee was unable to convene a quorum at the Committee's September 15, 2017, meeting, and was unable to make formal recommendations to the Board regarding changes to its unprofessional conduct rule. However, the Committee members that were present at the September 15, 2017, meeting, discussed the Board's unprofessional conduct rule and provided informal comments to Staff.

The Board reviewed and discussed the Commission's final recommendations, statutory changes made by HB 2950, the Com-

mittee's informal comments, and Board Staff's recommendations for changes to its unprofessional conduct rule at the October 2017 regularly scheduled Board meeting. The Board approved the proposed changes to the unprofessional conduct rule and directed they be published in the Texas Register for public comment.

Overview of Proposed Changes

First, the Board reviewed the statutory changes in HB 2950 (relating to unprofessional conduct) to ensure that the proposed changes to the rule comply with the legislature's intent. HB 2950 amended Tex. Occ. Code §301.452(b)(10) and authorizes the Board to take disciplinary action against an individual for unprofessional conduct in the practice of nursing that is likely to deceive, defraud, or injure a patient or the public. Further, HB 2950 added new §301.452(e), which requires the Board to adopt rules to ensure that disciplinary action, including licensure denial, under §301.452(b)(10) is based on the application of objective criteria that is clearly and rationally connected to the individual's conduct, and, that any negative outcome resulting from that conduct is determined to affect the individual's ability to effectively practice nursing.

In order to ensure that the Board's proposed changes comply with the mandates of HB 2950, the Board eliminated tenuous connections and subjective language and requirements not specifically related to the practice of nursing from the rule. Specifically, and in compliance with the Commission's recommendations, the Board also eliminated criminal conduct from the rule text. The Board then reviewed the rule, in compliance with the Commission's recommendations and the statutory changes in HB 2950, to ensure that the remaining specified conduct is clearly and rationally connected to the practice of nursing and is likely to objectively affect an individual's ability to effectively practice nursing. Additionally, the Board eliminated any unnecessary, repetitive, or confusing language from the rule.

Section by Section Overview

The rule begins by stating its purpose. The purpose of the rule is to identify behaviors in the practice of nursing which are likely to deceive, defraud, or injure clients or the public, regardless if actual injury is established. The specified conduct that follows is clearly and rationally connected to the practice of nursing, which is also consistent with the Commission's recommendations and the statutory mandates of HB 2950.

Proposed amended §217.12(1)(B) provides that failing to conform to generally accepted nursing standards in applicable practice settings constitutes unprofessional conduct. Because an individual's conduct need not be careless or repetitive in order to place patients or the public at risk of harm, the proposed amendment eliminates these qualifiers from the rule text.

Proposed amended §217.12(2) eliminates the phrase "appropriate and recognized" from the paragraph. The proposal instead requires compliance with standards and guidelines required by federal or state law or regulation or by facility policy, which are objective in nature and easier to identify.

Proposed amended §217.12(3) corrects capitalization errors and updates terminology. These proposed amendments are not considered substantive in nature.

Proposed amended §217.12(4) eliminates a redundant phrase that appears at the beginning of the rule. Further, because an individual's conduct need not be careless or repetitive in order

to endanger a patient or client's life, health, or safety, proposed amended §217.12(4) removes these unnecessary qualifiers from the rule.

Proposed amended §217.12(6)(B) corrects a capitalization error. This proposed amendment is not considered substantive in nature.

Because an individual's answers in licensing and employment matters are routinely relied upon by potential employers, credentialing organizations, patients, and the Board, a false or misleading response could reasonably affect a decision to license, employ, certify, or utilize the nurse. The proposed amendments to §217.12(6)(I) clarify this point.

Proposed amended §217.12(9) corrects a capitalization error. This proposed amendment is not considered substantive in nature.

Proposed amended §217.12(11)(B) corrects a capitalization error. This proposed amendment is not considered substantive in nature.

Proposed amended §217.12(11)(C) removes an unnecessary qualifier from the text of the rule.

The proposal eliminates current §217.12(13) in its entirety from the rule.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of rules that comply with the Commission's recommendations and the statutory mandates of HB 2950.

There are no anticipated costs of compliance with the proposal. The proposed amendments do not implement new requirements or restrictions, and in some cases, remove existing restrictions from the text of the rule. Further, the Board does not anticipate that licensees will alter their compliance with the rule based on the proposed amendments. Further, because there are no anticipated costs associated with the adoption of this proposal, the Board is not required to comply with the requirements of Tex. Gov't Code. §2001.0045. Even if costs were anticipated as a result of the implementation of the proposal, the Board is exempted from compliance with §2001.0045 under the provisions of §2001.0045(c)(9), as the proposal is a direct result of the Commission's recommendations and is necessary to implement the statutory mandates of HB 2950.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposed amendments because there are no anticipated costs of compliance with the proposal. As such, the Board is not required to prepare a regulatory flexibility analysis.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Tex. Admin. Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not

create or eliminate a government program; (ii) implementation of the proposal does not require the creation of new employee positions or the elimination of existing employee positions, as the proposal does not create new restrictions or requirements and is not expected to have an effect on existing agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board, as the proposal does not create new restrictions or requirements and is not expected to have an effect on existing agency positions; (iv) the proposal does not require an increase or decrease in fees paid to the Board; (v) the proposal does not create a new regulation; (vi) the proposal does not expand or repeal an existing regulation, and only limits the existing regulation to the extent that it removes conduct from the rule that is not directly and rationally related to the practice of nursing, as is required by the recommendations of the Commission and the statutory mandates of HB 2950; (vii) the proposal does not increase or decrease the number of individuals subject to the rule 's applicability; and (viii) the proposal does not have an effect on the state's economy.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal 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, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on January 7, 2018 to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the authority of the Occupations Code §301.151 and related §301.452(b)(10) and (e).

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.452(b)(10) provides that a person is subject to denial of a license or to disciplinary action for unprofessional conduct in the practice of nursing that is likely to deceive, defraud, or injure a patient or the public.

Section 301.452(e) requires the Board to adopt rules to ensure that license denials and disciplinary action under subsection (b)(10) are based on the application of objective criteria that are clearly and rationally connected to the applicant 's or license holder's conduct and that any negative outcome resulting from that conduct is determined to affect the person 's ability to effectively practice nursing.

Cross Reference To Statute. The following statutes are affected by this proposal:

Rule: §217.12

Statute: §301.151 and §301.452(b)(10) and (e)

§217.12. *Unprofessional Conduct.*

The following unprofessional conduct rules are intended to protect clients and the public from incompetent, unethical, or illegal conduct of licensees. The purpose of these rules is to identify [~~unprofessional or dishonorable~~] behaviors in the practice of nursing [~~of a nurse~~] which [~~the board believes~~] are likely to deceive, defraud, or injure clients or the public. Actual injury to a client need not be established. These behaviors include but are not limited to:

(1) Unsafe Practice--actions or conduct including, but not limited to:

(A) (No change.)

(B) ~~Failing~~ [~~Carelessly or repeatedly failing~~] to conform to generally accepted nursing standards in applicable practice settings;

(C) - (G) (No change.)

(2) Failure of a chief administrative nurse to follow [~~appropriate and recognized~~] standards and guidelines required by federal or state law or regulation or by facility policy in providing oversight of the nursing organization and nursing services for which the nurse is administratively responsible.

(3) Failure to practice within a modified scope of practice or with the required accommodations, as specified by the Board [~~board~~] in granting an encumbered [~~a coded~~] license or any stipulated agreement with the Board [~~board~~].

(4) Conduct [~~Careless or repetitive conduct~~] that may endanger a client's life, health, or safety. [~~Actual injury to a client need not be established.~~]

(5) (No change.)

(6) Misconduct--actions or conduct that include, but are not limited to:

(A) (No change.)

(B) Failing to cooperate with a lawful investigation conducted by the Board [~~board~~];

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

(I) Failing to answer specific questions or providing false or misleading answers in a licensure or employment matter that could reasonably affect [~~would have affected~~] the decision to license, employ, certify or otherwise utilize a nurse; or

(J) (No change.)

(7) - (8) (No change.)

(9) Dismissal from a board-approved peer assistance program for noncompliance and referral by that program to the Board [~~BNE~~].

(10) (No change.)

(11) Unlawful Practice--actions or conduct that include, but are not limited to:

(A) (No change.)

(B) Violating an order of the Board [~~board~~], or carelessly or repetitively violating a state or federal law relating to the practice of vocational, registered or advanced practice nursing, or violating a state or federal narcotics or controlled substance law;

(C) Aiding [~~Knowingly aiding~~], assisting, advising, or allowing a nurse under Board Order to violate the conditions set forth in the Order; or

(D) (No change).

(12) (No change.)

~~{(13) Criminal Conduct—including, but not limited to, conviction or probation, with or without an adjudication of guilt, or receipt of a judicial order involving a crime or criminal behavior or conduct that could affect the practice of nursing—}~~

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 November 20, 2017.

TRD-201704747

Jena Abel

Deputy General Counsel

Texas Board of Nursing

Earliest possible date of adoption: January 7, 2018

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



PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 322. PRACTICE

22 TAC §322.4

The Texas Board of Physical Therapy Examiners proposes an amendment to §322.4, Practicing in a Manner Detrimental to the Public Health and Welfare, regarding the addition of a violation of the Physical Therapy Licensure Compact rules.

The amendment as proposed would include violating the Physical Therapy Licensure Compact rules as practicing in a manner detrimental to the public health and welfare with possible disciplinary action.

John P. Maline, Executive Director, has determined that for the first five-year period this amendment is in effect there will be no impact on costs or revenue to state or local governments as a result of enforcing or administering this amendment. The rule is not anticipated to impact a local economy, and there is no probable economic cost to persons required to comply with the rule. The public benefit of the proposed rule is defining detrimental practice for individuals who are holding a Compact privilege to practice in Texas. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses or rural communities, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendment.

The impact of government growth by the proposed rule is as follows: does not create or eliminate a government program; does not require the creation of new employee positions or the elimination of existing employee positions; does not require an increase or decrease in future legislative appropriations to the agency; does not require an increase or decrease in fees paid to the agency; does not create a new regulation; does not expand, limit, or repeal an existing regulation; does not increase

or decrease the number of individuals subject to the rule's applicability; and neither positively nor adversely affects this state's economy.

Comments on the proposed amendments may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: karen@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register*.

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act. The proposed rule has been reviewed by legal counsel and found to be within the state agency's authority to adopt.

Government Code, §453.102. Cross-reference to Statute: Chapter 453.

§322.4. Practicing in a Manner Detrimental to the Public Health and Welfare.

(a) (No change.)

(b) Practicing in a manner detrimental to the public health and welfare may include, but is not limited to, the following:

(1) - (16) (No change.)

(17) abandoning or neglecting a patient under current care without making reasonable arrangements for the continuation of such care; ~~and~~

(18) failing to maintain the confidentiality of all verbal, written, electronic, augmentative, and nonverbal communication, including compliance with HIPAA regulations; ~~and~~[-]

(19) violating the rules of the Physical Therapy Licensure Compact if holding a Compact privilege to practice in Texas.

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 November 21, 2017.

TRD-201704770

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: January 7, 2018

For further information, please call: (512) 305-6900



CHAPTER 323. POWERS AND DUTIES OF THE BOARD

22 TAC §323.5, §323.6

The Texas Board of Physical Therapy Examiners proposes new rules §323.5 and §323.6, pursuant to Senate Bill (SB) 317 addition of §453.109, Occupations Code during the 85th Legislative Session.

The additional §323.5, Negotiated Rulemaking and §323.6, Alternative Dispute Resolution are proposed in order to comply

with statutory amendments to the Physical Therapy Practice Act regarding establishing a policy on Negotiated Rulemaking and Alternative Dispute Resolution.

John P. Maline, Executive Director, has determined that for the first five-year period these new rules are in effect there will be no impact on costs or revenue to state or local governments as a result of enforcing or administering these rules. The rules are not anticipated to impact a local economy, and there is no probable economic cost to persons required to comply with these rules. The public benefit of the proposed rules is clarification of the Board's use of alternative dispute resolution and negotiated rulemaking. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses or rural communities; therefore, an economic impact statement or regulatory flexibility analysis is not required for the new rules.

The impact of government growth by the proposed rules is as follows: does not create or eliminate a government program; does not require the creation of new employee positions or the elimination of existing employee positions; does not require an increase or decrease in future legislative appropriations to the agency; does not require an increase or decrease in fees paid to the agency; does create a new regulation for board function; does expand the existing powers and duties of the board; does not increase or decrease the number of individuals subject to the rule's applicability; and neither positively nor adversely affects this state's economy.

Comments on the proposed new rules may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: karen@ptot.texas.gov. Comments must be received no later than 30 days from the date these proposed new rules are published in the *Texas Register*.

The new rules are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Statutory Authority: Government Code, §453.102. Cross-reference to Statute: Chapter 453.

§323.5. Negotiated Rulemaking.

It is the policy of the board to engage in negotiated rulemaking procedures consistent with Texas Government Code, Chapter 2008, when appropriate.

§323.6. Alternative Dispute Resolution.

It is the policy of the board to use alternative dispute resolution where appropriate consistent with Texas Government Code Chapter 2009 and any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

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 November 21, 2017.

TRD-201704768

John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: January 7, 2018
For further information, please call: (512) 305-6900



CHAPTER 325. ORGANIZATION OF THE BOARD

22 TAC §325.1

The Texas Board of Physical Therapy Examiners proposes an amendment to §325.1, Elections, pursuant to Senate Bill (SB) 317 amendments of §453.058, Occupations Code, during the 85th Legislative Session.

The amendment is proposed in order to comply with a statutory amendment to the Physical Therapy Practice Act regarding the designation of the presiding officer of the board by the governor.

John P. Maline, Executive Director, has determined that for the first five-year period this amendment is in effect there will be no impact on costs or revenue to state or local governments as a result of enforcing or administering this amendment. The rule is not anticipated to impact a local economy, and there is no probable economic cost to persons required to comply with the rule. The public benefit of the proposed rule is clarification of the designation and election of the board's officers. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses or rural communities, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendment.

The impact of government growth by the proposed rule is as follows: does not create or eliminate a government program; does not require the creation of new employee positions or the elimination of existing employee positions; does not require an increase or decrease in future legislative appropriations to the agency; does not require an increase or decrease in fees paid to the agency; does not create a new regulation; does not expand, limit, or repeal an existing regulation; does not increase or decrease the number of individuals subject to the rule's applicability; and neither positively nor adversely affects this state's economy.

Comments on the proposed amendments may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: karen@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register*.

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Government Code, §453.102. Cross-reference to Statute: Chapter 453.

§325.1. Elections.

(a) The governor shall designate a member of the board as the presiding officer of the board.

(b) Elections of additional officers shall be held at the second board meeting after new members are appointed.

(c) Officers will assume duties at the next board meeting following election.

(d) Vacancies of offices other than the presiding officer shall be filled by election at the next board meeting following the vacancy. [Elections of officers shall be held at the second board meeting after new members are appointed. Officers will assume duties at the next board meeting. Vacancies of offices shall be filled by election at the next board meeting.]

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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John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
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For further information, please call: (512) 305-6900



22 TAC §325.7

The Texas Board of Physical Therapy Examiners proposes an amendment to §325.7, Board Member Terms, pursuant to Senate Bill (SB) 317 amendments of §453.056(a) Occupations Code during the 85th Legislative Session.

The amendment is proposed in order to comply with statutory amendments to the Physical Therapy Practice Act regarding grounds for removal and excused absences of a board member.

John P. Maline, Executive Director, has determined that for the first five-year period this amendment is in effect there will be no impact on costs or revenue to state or local governments as a result of enforcing or administering this amendment. The rule is not anticipated to impact a local economy, and there is no probable economic cost to persons required to comply with the rule. The public benefit of the proposed rule is clarification of the authority of the board to excuse the absence of a member from a regularly scheduled board meeting. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses or rural communities, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendment.

The impact of government growth by the proposed rule is as follows: does not create or eliminate a government program; does not require the creation of new employee positions or the elimination of existing employee positions; does not require an increase or decrease in future legislative appropriations to the agency; does not require an increase or decrease in fees paid to the agency; does not create a new regulation; does not expand, limit, or repeal an existing regulation; does not increase or decrease the number of individuals subject to the rule's applicability; and neither positively nor adversely affects this state's economy.

Comments on the proposed amendments may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: karen@ptot.texas.gov. Comments must

be received no later than 30 days from the date this proposed amendment is published in the *Texas Register*.

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Government Code, §453.102. Cross-reference to Statute: Chapter 453.

§325.7. Board Member Terms.

(a) Members of the board serve staggered six-year terms expiring in January of an odd-numbered year, or as appointed by the governor.

(b) If a vacancy occurs during a member's term, the governor shall appoint a replacement to fill the unexpired part of the term.

(c) A member's absence from a regularly scheduled board meeting that the member is eligible to attend may be excused by a majority vote of the 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 November 21, 2017.

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John P. Maline
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For further information, please call: (512) 305-6900



CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.2

The Texas Board of Physical Therapy Examiners proposes an amendment to §329.2, Licensure by Examination, pursuant to Senate Bill (SB) 317 amendments of §453.205, Occupations Code, during the 85th Legislative Session.

The amendment is proposed in order to comply with a statutory amendment to the Physical Therapy Practice Act regarding the compliance of the security and copyright of the National Physical Therapy Examination and reporting of any known violations.

John P. Maline, Executive Director, has determined that for the first five-year period this amendment is in effect there will be no impact on costs or revenue to state or local governments as a result of enforcing or administering this amendment. The rule is not anticipated to impact a local economy, and there is no probable economic cost to persons required to comply with the rule. The public benefit of the proposed rule is clarification that the national examination used for licensure is a secure and copyrighted assessment tool and that violators of the security and copyright will be reported. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses or rural communities, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendment.

The impact of government growth by the proposed rule is as follows: does not create or eliminate a government program;

does not require the creation of new employee positions or the elimination of existing employee positions; does not require an increase or decrease in future legislative appropriations to the agency; does not require an increase or decrease in fees paid to the agency; does not create a new regulation; does not expand, limit, or repeal an existing regulation; does not increase or decrease the number of individuals subject to the rule's applicability; and neither positively nor adversely affects this state's economy.

Comments on the proposed amendments may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: karen@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register*.

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Government Code, §453.102. Cross-reference to Statute: Chapter 453.

§329.2. *Licensure by Examination.*

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

(e) NPTE Security and Copyright.

(1) An applicant for a license must agree to comply with the security and copyright provision of the NPTE.

(2) The board will report any known violation of the security or copyright provision or a compromise or attempted compromise of the provision to the FSBPT.

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 November 21, 2017.

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John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: January 7, 2018

For further information, please call: (512) 305-6900



CHAPTER 341. LICENSE RENEWAL

22 TAC §341.2

The Texas Board of Physical Therapy Examiners proposes an amendment to §341.2, Continuing Competence Requirements, pursuant to Senate Bill (SB) 317 amendments of §453.254, Continuing Competence, Occupations Code, during the 85th Legislative Session.

The amendment is proposed in order to comply with a statutory amendment to the Physical Therapy Practice Act regarding the use of a Request for Proposal process in selecting an appropriate organization to approve continuing competence activities.

John P. Maline, Executive Director, has determined that for the first five-year period this amendment is in effect there will be no impact on costs or revenue to state or local governments as a result of enforcing or administering this amendment. The rule is not anticipated to impact a local economy, and there is no probable economic cost to persons required to comply with the rule. The public benefit of the proposed rule is clarification that the process for selecting an appropriate organization to approve continuing competence activities is through the board's established rule for Request for Proposals for Outsourced Services. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses or rural communities, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendment.

The impact of government growth by the proposed rule is as follows: does not create or eliminate a government program; does not require the creation of new employee positions or the elimination of existing employee positions; does not require an increase or decrease in future legislative appropriations to the agency; does not require an increase or decrease in fees paid to the agency; does not create a new regulation; does not expand, limit, or repeal an existing regulation; does not increase or decrease the number of individuals subject to the rule's applicability; and neither positively nor adversely affects this state's economy.

Comments on the proposed amendments may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: karen@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register*.

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Government Code, §453.102. Cross-reference to Statute: Chapter 453.

§341.2. *Continuing Competence Requirements.*

(a) (No change.)

(b) All continuing competence activities submitted to satisfy renewal requirements must be board-approved by an organization selected by the board as established in subsection (i) [(h)] of this section.

(c) - (g) (No change.)

(h) If the board chooses to authorize an organization(s) to approve continuing competence activities, the board shall select an appropriate organization(s) pursuant to §323.4 of this title, Request for Proposals for Outsourced Services.

(i) [(h)] Pursuant to a Memorandum of Understanding (MOU) with the board, the Texas Physical Therapy Association (TPTA) shall act as a board-approved organization and shall be authorized to accredit providers and to evaluate and approve continuing competence activities for purposes of compliance with mandatory CC requirements as set by the board. This authority shall include authority to give, deny, withdraw and limit accreditation of providers and approval of competence activities, and to charge and collect fees as set forth in the MOU and in the statute and rules governing the board and the practice of physical therapy in Texas.

(1) A program may be approved before or after the licensee attends it, but must be approved prior to license renewal.

(2) To apply for continuing competence review, the licensee or sponsor/provider must submit a fee as approved by the board with the CC review application and any additional documentation as specified in this section to the TPTA. Interested parties may contact the TPTA in Austin, Texas, (512) 477-1818, www.tpta.org.

(A) Accredited providers and course sponsors are authorized to use the following statements to notify licensees of approval.

(i) Sponsors of approved activities.

(I) The following statement is authorized for use in publicity: "This activity has been approved by the Texas Board of Physical Therapy Examiners for ___ CCUs for PTs and PTAs."

(II) The following statement is authorized for use on certificates of completion only: "This activity has been approved by the Texas Board of Physical Therapy Examiners, approval #___, for ___ CCUs for PTs and PTAs."

(ii) Accredited providers.

(I) The following statement is authorized for use in publicity: "This activity is offered by the Texas Board of Physical Therapy Examiners Accredited Provider #___ and provides ___ CCUs for PTs and PTAs licensed in Texas."

(II) The following statement is authorized for use on certificates of completion only: "This activity is offered by the Texas Board of Physical Therapy Examiners Accredited Provider #___ and provides ___ CCUs for PTs and PTAs licensed in Texas."

(B) Sponsors of activities that have not received an approval number from the TPTA are not authorized to include a statement implying pending or future approval of that activity by the board.

(C) A course is approved only for the accredited provider offering the course or the sponsor submitting it for approval. Course approval may not be transferred from one provider or sponsor to another.

(3) Interested parties may contact the TPTA to inquire if a particular activity is approved. A list of approved activities is available on the TPTA web site.

(4) Pursuant to the MOU, the TPTA shall provide quarterly reports to the board of its activities. Additionally, the TPTA shall report to the board the results of periodic quality assurance follow-up or review of a representative sample of approved continuing competence activities. In the event of sponsor/provider noncompliance, results will be reported to the board in writing for further investigation and direction.

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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John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
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For further information, please call: (512) 305-6900



CHAPTER 343. CONTESTED CASE PROCEDURE

22 TAC §343.35

The Texas Board of Physical Therapy Examiners proposes an amendment to §343.35, Complaint Investigation and Disposition, pursuant to Senate Bill (SB) 317 amendments of §453.154(e), Occupations Code, during the 85th Legislative Session.

The amendment is proposed in order to comply with a statutory amendment to the Physical Therapy Practice Act regarding the designation of staff instead of the coordinator and the executive director to provide summary data of complaints to the board so that necessary action can be taken on the complaint.

John P. Maline, Executive Director, has determined that for the first five-year period this amendment is in effect there will be no impact on costs or revenue to state or local governments as a result of enforcing or administering this amendment. The rule is not anticipated to impact a local economy, and there is no probable economic cost to persons required to comply with the rule. The public benefit of the proposed rule is clarification of the process for providing summary data of complaints to the board so that the board may take necessary action on complaints. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses or rural communities, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendment.

The impact of government growth by the proposed rule is as follows: does not create or eliminate a government program; does not require the creation of new employee positions or the elimination of existing employee positions; does not require an increase or decrease in future legislative appropriations to the agency; does not require an increase or decrease in fees paid to the agency; does not create a new regulation; does not expand, limit, or repeal an existing regulation; does not increase or decrease the number of individuals subject to the rule's applicability; and neither positively nor adversely affects this state's economy.

Comments on the proposed amendments may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: karen@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register*.

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Government Code, §453.102. Cross-reference to Statute: Chapter 453.

§343.35. *Complaint Investigation and Disposition.*

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

(c) The staff shall provide summary data of complaints extending beyond the complaint timeline to the [e]xecutive director and the [e]xecutive director who will then notify the [e] board so that the board may take necessary action on the complaint.

(d) - (e) (No change.)

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

Filed with the Office of the Secretary of State on November 21, 2017.

TRD-201704769

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: January 7, 2018

For further information, please call: (512) 305-6900



PART 28. EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 651. FEES

22 TAC §651.2

The Executive Council of Physical Therapy and Occupational Therapy Examiners proposes an amendment to §651.2, Physical Therapy Board Fees to add fees for a privilege to practice under the Physical Therapy Licensure Compact.

The amendment as proposed would add a state fee of \$50.00 for individuals from other Compact states who apply for privileges to practice in Texas. If an applicant is active military or the spouse of active military or a veteran, the fee would be \$0.00.

John P. Maline, Executive Director, has determined that for the first five-year period this amendment is in effect there will be no impact on costs or revenue to state or local governments as a result of enforcing or administering this amendment. The rule is not anticipated to impact a local economy, and there is no probable economic cost to persons required to comply with the rule. The public benefit of the proposed rule is clarification of the fees charged to physical therapists and physical therapist assistants who are seeking a Compact privilege to practice in Texas. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses or rural communities; therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendment.

The impact of government growth by the proposed rule is as follows: does not create or eliminate a government program; does not require the creation of new employee positions or the elimination of existing employee positions; does not require an increase or decrease in future legislative appropriations to the agency; does not require an increase or decrease in existing fees paid to the agency; does not create a new regulation; does not expand, limit, or repeal an existing regulation; does not increase or decrease the number of individuals subject to the rule's applicability; and neither positively nor adversely affects this state's economy.

Comments on the proposed amendments may be submitted to Randall Glines, Staff Services Officer, Executive Council of Physical Therapy and Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: randall@ptot.texas.gov. Comments must be received no later than

30 days from the date this proposed amendment is published in the *Texas Register*.

The amendments are proposed under the Executive Council of Physical Therapy and Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Executive Council of Physical Therapy and Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Statutory Authority: Government Code, §452.154. Cross-reference to Statute: Chapter 452.

§651.2. *Physical Therapy Board Fees.*

(a) - (n) (No change.)

(o) Compact Privilege Fee.

(1) Non military/spouse or veteran PT or PTA--\$50.

(2) Military/spouse or veteran PT or PTA--\$0.00.

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 November 22, 2017.

TRD-201704781

John P. Maline

Executive Director

Executive Council of Physical Therapy and Occupational Therapy Examiners

Earliest possible date of adoption: January 7, 2018

For further information, please call: (512) 305-6900



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 61. DESIGN AND CONSTRUCTION SUBCHAPTER A. CONTRACTS FOR PUBLIC WORKS

31 TAC §61.22

The Texas Parks and Wildlife Department proposes new §61.22, concerning Purchase of Iron or Steel Products.

The new section would require the department to develop, implement, and follow guidelines and policies to ensure compliance with the provisions of Government Code, Chapter 2252, Subchapter F, which was created by the enactment of Senate Bill 1289 by the 85th Texas Legislature (Regular Session). The bill sets forth certain requirements for projects by governmental entities that involve the purchase of iron or steel products.

Under the provisions of Government Code, §2252.202, as added by SB 1289, a governmental entity subject to the requirements of the bill is required to adopt rules to promote compliance with the requirements of the bill. The proposed new rule would establish the department's intent to do so.

Jessica Davisson, Infrastructure Division Director, has determined that for each of the first five years that the new rule as proposed is in effect, any fiscal implications to state or local governments as a result of administering or enforcing the rule will be a result of the legislation that mandates the rule and not the rule itself.

Ms. Davisson also has determined that for each of the first five years that the rule as proposed is in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be the agency's compliance with the direction of the legislature.

There will be no adverse economic effect on persons required to comply with the rule as proposed, since the rule affects only the department.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, and rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the rule itself will not affect small businesses, micro-businesses, or rural communities. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that because the rule as proposed does not impose a cost on regulated persons, it is not necessary to repeal or amend any existing rule.

In compliance with the requirements of Government Code, §2001.024, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; create a new regulation; not expand, limit, or repeal an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and have an insignificant positive impact on the state's economy.

Comments on the proposal may be submitted to Scott Stover at (512) 389-4849, e-mail: scott.stover@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

The new rule is proposed under the authority of Government Code, §2252.202, which requires any agency that purchases iron or steel products for certain projects to adopt rules to promote compliance with the provisions of Government Code, §2252.202.

The proposed new rule affects Government Code, Chapter 2252.

§61.22. Purchase of Iron or Steel Products.

The department shall develop, implement, and follow guidelines and policies to ensure compliance with the provisions of Government Code, §2252.202(a).

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 November 27, 2017.

TRD-201704800

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: January 7, 2018

For further information, please call: (512) 389-4849



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 429. FIRE INSPECTOR

The Texas Commission on Fire Protection (the commission) proposes new Chapter 429, Fire Inspector, concerning Subchapter A, Minimum Standards For Fire Inspector I/II Certification, §429.1, Minimum Standards for Fire Inspector I/II Personnel, §429.3, Minimum Standards for Basic Fire Inspector/II Certification, §429.5, Minimum Standards for Intermediate Fire Inspector I/II Certification, §429.7, Minimum Standards for Advanced Fire Inspector I/II Certification, §429.9, Minimum Standards for Master Fire Inspector I/II Certification, §429.11, International Fire Service Accreditation Congress (IFSAC) Seal; and Subchapter B, Minimum Standards For Fire Inspector I/III/Plan Examiner I Certification, §429.201 Minimum Standards for Fire Inspector I/II/Plan Examiner I Personnel, §429.203, Minimum Standards for Basic Fire Inspector I/III/Plan Examiner I Certification, §429.205 Minimum Standards for Intermediate Fire Inspector I/II/Plan Examiner I Certification, §429.207, Minimum Standards for Advanced Fire Inspector I/II/Plan Examiner I Certification, §429.209, Minimum Standards for Master Fire Inspector I/II/Plan Examiner I Certification, and §429.211, International Fire Service Accreditation Congress (IFSAC) Seal.

The purpose of the proposed new chapter is to establish new rule language that creates distinct certifications for Fire Inspector that follows the guidelines set forth in the National Fire Protection Association Standard (NFPA).

Tim Rutland, Executive Director, has determined that for each year of the first five year period the proposed new chapter is in

effect, there will be no significant fiscal impact to state government or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed new chapter is in effect, the public benefit from the passage is that the commission will now offer two separate certifications for Fire Inspector which has been requested by the fire service. There will be no effect on micro or small businesses or persons required to comply with the new chapter as proposed.

The agency has determined that during the first five years the new rule is in effect:

- (1) the rule will not create or eliminate a government program;
- (2) the rule will not create new or eliminate any existing employee positions;
- (3) the rule will not require an increase or decrease in future legislative appropriations;
- (4) the rule will increase fees paid to the agency since individuals assigned to do code enforcement must hold a commission Fire Inspector certification;
- (5) the rule will not create a new regulation;
- (6) the rule will expand an existing regulation;
- (7) the rule will expand the number of individuals subject to the rule's applicability if fire departments decide to take advantage of the additional certification; and
- (8) The new rule would have a positive impact on the state's economy due to an increase in the number of individuals certified, thus allowing more code enforcement inspections and safer conditions for businesses and their patrons.

Comments regarding the proposed new chapter may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

SUBCHAPTER A. MINIMUM STANDARDS FOR FIRE INSPECTOR I/II CERTIFICATION

37 TAC §§429.1, 429.3, 429.5, 429.7, 429.9, 429.11

The new chapter is proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; §419.032 which allows the commission to appoint fire protection personnel.

The proposed new chapter implements Texas Government Code, Chapter 419, §419.008 and §419.032.

§429.1. Minimum Standards for Fire Inspector I/II Personnel.

(a) Fire protection personnel of a governmental entity who are appointed to fire code enforcement duties at the Fire Inspector I/II level must be certified, at a minimum, as a Basic Fire Inspector I/II as specified in §429.3 of this title (relating to Minimum Standards for Basic Fire Inspector I/II Certification) within one year of initial appointment to such duties.

(b) Prior to being appointed to fire code enforcement duties at the Fire Inspector I/II level, all personnel must complete the applicable commission approved Fire Inspector I/II training program and successfully pass the commission examination pertaining to that curriculum.

(c) Individuals holding any level of fire inspector certification will be required to comply with all applicable continuing education requirements in Chapter 441 of this title (relating to Continuing Education).

(d) Fire code enforcement is defined as the enforcement of laws, codes, and ordinances of the authority having jurisdiction pertaining to fire prevention.

(e) Personnel certified as Fire Inspector I/II may only engage in fire code enforcement duties that are commensurate with the job performance requirements listed for Fire Inspector I or II in the current edition of NFPA 1031: Standard for Professional Qualifications for Fire Inspector and Plan Examiner, or its successor.

(f) Individuals who were issued a Basic Fire Inspector certification prior to January 1, 2005, and who currently hold a basic certification or higher, are deemed to hold the same level of certification referenced in this subchapter.

§429.3. Minimum Standards for Basic Fire Inspector I/II Certification.

In order to be certified as a Basic Fire Inspector I/II, an individual must:

(1) possess valid documentation as a Fire Inspector I and Fire Inspector II from either:

(A) the International Fire Service Accreditation Congress; or

(B) the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2009 or later edition of the NFPA standard applicable to this discipline and meeting the requirements as specified in §439.1 of this title (relating to Requirements-General); or

(2) complete a commission approved Fire Inspector I/II training program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Fire Inspector I/II training program shall consist of one of the following:

(A) completion of the commission approved Fire Inspector I/II Curriculum, as specified in the commission's Certification Curriculum Manual; or

(B) successful completion of an out-of-state, NFA, and/or military training program which has been submitted to the commission for evaluation and found to meet the minimum requirements in the commission approved Fire Inspector I/II Curriculum as specified in the commission's Certification Curriculum Manual; or

(C) documentation of the receipt of Fire Inspector I and Fire Inspector II certificates issued by the State Firemen's and Fire Marshals' Association of Texas that are deemed equivalent to a commission approved Fire Inspector I/II curriculum.

§429.5. Minimum Standards for Intermediate Fire Inspector I/II Certification.

(a) Applicants for Intermediate Fire Inspector I/II Certification must meet the following requirements:

(1) hold as a prerequisite Basic Fire Inspector I/II Certification as defined in §429.3 of this title (relating to Minimum Standards for Basic Fire Inspector I/II Certification); and

(2) acquire a minimum of four years of fire protection experience and complete the training listed in one of the following options:

(A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the

commission that the courses comply with subsections (b) and (c) of this section; or

(B) Option 2--Completion of coursework from either the A-List or the B-List courses. Acceptable combinations of courses are as follows: two A-List courses; or eight B-List courses; or one A-List course and four B-List courses. (See the exception outlined in subsection (c) of this section); or

(C) Option 3--Completion of coursework from either the A-List or the B-List courses in combination with college courses in fire science or fire protection. Acceptable combinations of courses are three semester hours meeting the requirements of Option 1 with either one A-List course or four B-List courses. (See the exception outlined in subsection (c) of this section.)

(b) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's Certification Curriculum Manual or for experience in the fire service, may not be counted toward this level of certification.

(c) The training required in this section must be in addition to any training used to qualify for any lower level of Fire Inspector I/II Certification. Repeating a course or a course of similar content cannot be used towards this level of certification.

§429.7. Minimum Standards for Advanced Fire Inspector I/II Certification.

(a) Applicants for Advanced Fire Inspector I/II Certification must complete the following requirements:

(1) hold as a prerequisite an Intermediate Fire Inspector I/II Certification as defined in §429.5 of this title (relating to Minimum Standards for Intermediate Fire Inspector I/II Certification); and

(2) acquire a minimum of eight years of fire protection experience and complete the training listed in one of the following options:

(A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the commission that the courses comply with subsections (b) and (c) of this section; or

(B) Option 2--Completion of coursework from either the A-List or the B-List courses. Acceptable combinations of courses are as follows: two A-List courses; or eight B-List courses; or one A-List course and four B-List courses. (See the exception outlined in subsection (c) of this section); or

(C) Option 3--Completion of coursework from either the A-List or the B-List courses in combination with college courses in fire science or fire protection. Acceptable combinations of courses are three semester hours meeting the requirements of Option 1 with either one A-List course or four B-List courses. (See the exception outlined in subsection (c) of this section.)

(b) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's Certification Curriculum Manual or for experience in the fire service, may not be counted toward this level of certification.

(c) The training required in this section must be in addition to any training used to qualify for any lower level of Fire Inspector I/II Certification. Repeating a course or a course of similar content cannot be used towards this level of certification.

§429.9. Minimum Standards for Master Fire Inspector I/II Certification.

(a) Applicants for Master Fire Inspector I/II Certification must complete the following requirements:

(1) hold as a prerequisite an Advanced Fire Inspector I/II Certification as defined in §429.7 of this title (relating to Minimum Standards for Advanced Fire Inspector I/II Certification); and

(2) acquire a minimum of 12 years of fire protection experience, and 60 college semester hours or an associate degree, which includes at least 18 college semester hours in fire science subjects.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Master Fire Inspector I/II Certification.

§429.11. International Fire Service Accreditation Congress (IFSAC) Seal.

(a) Individuals who pass the applicable sections of the state examination may be granted IFSAC seals for Fire Inspector I and Fire Inspector II by making application to the commission for the IFSAC seals and paying the applicable fees, provided they meet the following provisions:

(1) To receive the Fire Inspector I IFSAC seal, the individual must:

(A) complete the Fire Inspector I section of a commission approved course; and

(B) pass the Fire Inspector I section of a commission examination.

(2) To receive the Fire Inspector II IFSAC seal, the individual must:

(A) complete the Fire Inspector II section of a commission approved course;

(B) document possession of a Fire Inspector I IFSAC seal; and

(C) pass the Fire Inspector II section of a commission examination.

(b) In order to qualify for an IFSAC seal, an individual must submit the application for the seal prior to the expiration of the examination.

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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Tim Rutland

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3812



SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE INSPECTOR I/II/PLAN EXAMINER I CERTIFICATION

37 TAC §§429.201, 429.203, 429.205, 429.207, 429.209, 429.211

The new chapter is proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; §419.032 which allows the commission to appoint fire protection personnel.

The proposed new chapter implements Texas Government Code, Chapter 419, §419.008 and §419.032.

§429.201. Minimum Standards for Fire Inspector I/II/Plan Examiner I Personnel.

(a) Fire protection personnel of a governmental entity who are appointed to fire code enforcement duties at the Fire Inspector I/II/Plan Examiner I level must be certified, at a minimum, as a Basic Fire Inspector I/II/Plan Examiner I as specified in §429.203 of this title (relating to Minimum Standards for Basic Fire Inspector I/II/Plan Examiner I Certification) within one year of initial appointment to such position.

(b) Prior to being appointed to fire code enforcement duties at the Fire Inspector I/II/Plan Examiner I level, all personnel must complete the applicable commission approved fire inspection training program and successfully pass the commission examination pertaining to that curriculum.

(c) Individuals holding any level of fire inspector certification shall be required to comply with all applicable continuing education requirements in Chapter 441 of this title (relating to Continuing Education).

(d) Fire code enforcement is defined as the enforcement of laws, codes, and ordinances of the authority having jurisdiction pertaining to fire prevention.

(e) Individuals other than the head of a department who supervise personnel in fire code enforcement duties, or manage fire code enforcement programs, must be certified as Fire Inspector I/II/Plan Examiner I, or hold any Fire Inspector certification issued prior to March 1, 2018.

(f) After March 1, 2018, individuals wishing to satisfy the requirements for Head of a Prevention-Only Fire Department must hold Fire Inspector I/II/Plan Examiner I if fire code enforcement is one of the activities of the organization. Individuals already serving as Head of a Prevention Only Fire Department prior to this date are exempt.

(g) Individuals who were issued a Basic Fire Inspector certification after January 1, 2005, and who currently hold basic certification or higher, are deemed to hold the same level of certification referenced in this subchapter.

§429.203. Minimum Standards for Basic Fire Inspector I/II/Plan Examiner I Certification.

In order to be certified as a Basic Fire Inspector I/II/Plan Examiner I, an individual must:

(1) possess valid documentation as Fire Inspector I, Fire Inspector II, and Plan Examiner I from either:

(A) the International Fire Service Accreditation Congress; or

(B) the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2009 or later edition of the NFPA standard applicable to this discipline and meeting the requirements as specified in §439.1 of this title (relating to Requirements--General); or

(2) complete a commission approved Fire Inspector I/II/Plan Examiner I program and successfully pass the commission examination(s) as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved fire inspection training program shall consist of one or any combination of the following:

(A) completion of the commission approved Fire Inspector I/II/Plan Examiner I Curriculum, as specified in the commission's Certification Curriculum Manual; or

(B) successful completion of an out-of-state, NFA, and/or military training program which has been submitted to the commission for evaluation and found to meet the minimum requirements in the commission approved Fire Inspector I/II/Plan Examiner I Curriculum as specified in the commission's Certification Curriculum Manual; or

(C) successful completion of the following college courses:

(i) Fire Protection Systems, three semester hours;

(ii) Fire Prevention Codes and Inspections, three semester hours;

(iii) Building Construction in the Fire Service or Building Codes and Construction, three semester hours;

(iv) Hazardous Materials I, II, or III, three semester hours (total semester hours, 12).

(D) documentation of the receipt of Fire Inspector I, Fire Inspector II, and Plan Examiner I certificates issued by the State Firemen's and Fire Marshals' Association of Texas that are deemed equivalent to a commission approved Fire Inspector I/II/Plan Examiner I curriculum.

§429.205. Minimum Standards for Intermediate Fire Inspector I/II/Plan Examiner I Certification.

(a) Applicants for Intermediate Fire Inspector I/II/Plan Examiner I Certification must meet the following requirements:

(1) hold as a prerequisite Basic Fire Inspector I/II/Plan Examiner I Certification as defined in §429.203 of this title (relating to Minimum Standards for Basic Fire Inspector I/II/Plan Examiner I Certification); and

(2) acquire a minimum of four years of fire protection experience and complete the training listed in one of the following options:

(A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the commission that the courses comply with subsections (b) and (c) of this section; or

(B) Option 2--Completion of coursework from either the A-List or the B-List courses. Acceptable combinations of courses are as follows: two A-List courses; or eight B-List courses; or one A-List course and four B-List courses. (See the exception outlined in subsection (c) of this section); or

(C) Option 3--Completion of coursework from either the A-List or the B-List courses in combination with college courses in fire science or fire protection. Acceptable combinations of courses are three semester hours meeting the requirements of Option 1 with either one A-List course or four B-List courses. (See the exception outlined in subsection (c) of this section.)

(b) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's Certification Curriculum Manual or for

experience in the fire service, may not be counted toward this level of certification.

(c) The training required in this section must be in addition to any training used to qualify for any lower level of Fire Inspector I/II/Plan Examiner I Certification. Repeating a course or a course of similar content cannot be used towards this level of certification.

§429.207. Minimum Standards for Advanced Fire Inspector I/II/Plan Examiner I Certification.

(a) Applicants for Advanced Fire Inspector I/II/Plan Examiner I Certification must complete the following requirements:

(1) hold as a prerequisite an Intermediate Fire Inspector I/II/Plan Examiner I Certification as defined in §429.205 of this title (relating to Minimum Standards for Intermediate Fire Inspector I/II/Plan Examiner I Certification); and

(2) acquire a minimum of eight years of fire protection experience and complete the training listed in one of the following options:

(A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the commission that the courses comply with subsections (b) and (c) of this section; or

(B) Option 2--Completion of coursework from either the A-List or the B-List courses. Acceptable combinations of courses are as follows: two A-List courses; or eight B-List courses; or one A-List course and four B-List courses. (See the exception outlined in subsection (c) of this section); or

(C) Option 3--Completion of coursework from either the A-List or the B-List courses in combination with college courses in fire science or fire protection. Acceptable combinations of courses are three semester hours meeting the requirements of Option 1 with either one A-List course or four B-List courses. (See the exception outlined in subsection (c) of this section.)

(b) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's Certification Curriculum Manual or for experience in the fire service, may not be counted toward this level of certification.

(c) The training required in this section must be in addition to any training used to qualify for any lower level of Fire Inspector I/II/Plan Examiner I Certification. Repeating a course or a course of similar content cannot be used towards this level of certification.

§429.209. Minimum Standards for Master Fire Inspector I/II/Plan Examiner I Certification.

(a) Applicants for Master Fire Inspector I/II/Plan Examiner I Certification must complete the following requirements:

(1) hold as a prerequisite an Advanced Fire Inspector I/II/Plan Examiner I Certification as defined in §429.207 of this title (relating to Minimum Standards for Advanced Fire Inspector I/II/Plan Examiner I Certification); and

(2) acquire a minimum of 12 years of fire protection experience, and 60 college semester hours or an associate degree, which includes at least 18 college semester hours in fire science subjects.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Master Fire Inspector I/II/Plan Examiner I Certification.

§429.211. International Fire Service Accreditation Congress (IF-SAC) Seal.

(a) Individuals who hold Fire Inspector certification issued prior to January 1, 2005, may apply to test for Plan Examiner I. Upon successful completion of the examination, an IFSAC seal for Plan Examiner I may be granted by making application to the commission for the IFSAC seal and paying the applicable fee.

(b) Individuals who pass the applicable section of the state examination may be granted IFSAC seals for Fire Inspector I, Fire Inspector II, and/or Plan Examiner I by making application to the commission for the IFSAC seals and paying the applicable fees, provided they meet the following provisions:

(1) To receive the Fire Inspector I IFSAC seal, the individual must:

(A) complete the Fire Inspector I section of a commission approved course; and

(B) pass the Fire Inspector I section of a commission examination.

(2) To receive the Fire Inspector II IFSAC seal, the individual must:

(A) complete the Fire Inspector II section of a commission approved course;

(B) document possession of a Fire Inspector I IFSAC seal; and

(C) pass the Fire Inspector II section of a commission examination.

(3) To receive the Plan Examiner I IFSAC seal, the individual must:

(A) complete the Plan Examiner I section of a commission approved course; and

(B) pass the Plan Examiner I section of a commission examination.

(c) In order to qualify for an IFSAC seal, an individual must submit the application for the seal prior to the expiration of the examination.

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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Tim Rutland

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3812



CHAPTER 429. MINIMUM STANDARDS FOR FIRE INSPECTOR CERTIFICATION

37 TAC §§429.201, 429.203, 429.205, 429.207, 429.209, 429.211

The Texas Commission on Fire Protection (the commission) proposes the repeal of Chapter 429, Minimum Standards For Fire Inspector Certification, concerning §429.201, Minimum Standards for Fire Inspector Personnel, §429.203, Minimum Standards for Basic Fire Inspector Certification, §429.205, Minimum Standards for Intermediate Fire Inspector Certification, §429.207, Minimum Standards for Advanced Fire Inspector Certification, §429.209, Minimum Standards for Master Fire Inspector Certification, and §429.211, International Fire Service Accreditation Congress (IFSAC) Seal.

The purpose of the proposed repeal is to establish a new Chapter 429, titled Fire Inspector, that creates distinct certifications for Fire Inspector I/II and Fire Inspector I/II/Plan Examiner I. The change follows the guidelines set forth in the applicable National Fire Protection Association (NFPA) standard. The new chapter will consist of Subchapter A, Minimum Standards For Fire Inspector I/II Certification and Subchapter B, Minimum Standards For Fire Inspector I/II/Plan Examiner I Certification. Subchapter B will consist primarily of current rule language with some modifications.

Tim Rutland, Executive Director, has determined that for each year of the first five year period the proposed repeal is in effect, there will be no significant fiscal impact to state government or local governments.

Mr. Rutland has also determined that for each year of the first five years the repeal is in effect the public benefit from the passage of the repeal will be more clear and concise rules with regards to commission Fire Inspector certifications by offering two separate certifications which has been requested by the fire service. There will be no effect on micro or small businesses or persons required to comply with the repeal as proposed.

The agency has determined that during the first five years the repeal is in effect:

- (1) the rule will not create or eliminate a government program;
- (2) the rule will not create or eliminate any existing employee positions;
- (3) the rule will not require an increase or decrease in future legislative appropriations;
- (4) the rule will not increase or decrease fees paid to the agency;
- (5) the rule will not create a new regulation;
- (6) the rule will not limit an existing rule;
- (7) the rule will not expand the number of individuals subject to the rules applicability; and
- (8) The repeal will not have a negative impact on the state's economy due to the commission proposing a new rule that would have a positive impact due to an increase in the number of individuals who may seek to obtain the new certification.

Comments regarding the proposed repeal may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The repeal is proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to

propose rules for the administration of its powers and duties; and by §419.032 which allows the commission to appoint fire protection personnel.

The proposed repeal implements Texas Government Code, Chapter 419, §419.008 and §419.032.

§429.201. *Minimum Standards for Fire Inspector Personnel.*

§429.203. *Minimum Standards for Basic Fire Inspector Certification.*

§429.205. *Minimum Standards for Intermediate Fire Inspector Certification.*

§429.207. *Minimum Standards for Advanced Fire Inspector Certification.*

§429.209. *Minimum Standards for Master Fire Inspector Certification.*

§429.211. *International Fire Service Accreditation Congress (IFSAC) Seal.*

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

Filed with the Office of the Secretary of State on November 20, 2017.

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Tim Rutland

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: January 7, 2018

For further information, please call: (512) 936-3812



CHAPTER 451. FIRE OFFICER

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 451, Fire Officer in Subchapter C, Minimum Standards For Fire Officer III and Subchapter D, Minimum Standards For Fire Officer IV. Specifically, the commission proposes amending §451.303, Minimum Standards for Fire Officer III Certification and §451.307, International Fire Service Accreditation Congress (IFSAC) Seal in Subchapter C and §451.403, Minimum Standards for Fire Officer IV Certification, and §451.407, International Fire Service Accreditation Congress (IFSAC) Seal in Subchapter D.

The purpose of the proposed amendments is to revise the qualifications for Fire Officer III certification and to delete obsolete language for both Fire Officer III and Fire Officer IV.

Tim Rutland, Executive Director, has determined that for each year of the first five year period the proposed amendments are in effect, there will be no significant fiscal impact to state government or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is to expand the opportunity for qualification for Fire Officer III certification where the current rule has created an unintended consequence and the commission seeks to correct the issue.

There will be no effect on micro or small businesses or persons required to comply with the amendments as proposed.

The agency has determined that during the first five years the amended rules are in effect:

- (1) the rule will not create or eliminate a government program;
- (2) the rule will not create new or eliminate any existing employee positions;
- (3) the rule will not increase or decrease future legislative appropriations;
- (4) the rule will not increase or decrease fees paid to the agency;
- (5) the rule will not create a new regulation;
- (6) the rule will not expand, limit or repeal an existing regulation;
- (7) the rule will expand the availability of the certification to more individuals, which could have the effect of increasing the number of individuals subject to the rule; however, the certification itself is not mandated by the commission and is considered a voluntary or professional development certification; and
- (8) the rule amendments are not anticipated to have either a positive or adverse impact on the state's economy.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

SUBCHAPTER C. MINIMUM STANDARDS FOR FIRE OFFICER III

37 TAC §451.303, §451.307

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties and §419.032, which allows the commission to appoint fire protection personnel.

The proposed amendments implement Texas Government Code, Chapter 419, §419.008 and §419.032.

§451.303. *Minimum Standards for Fire Officer III Certification.*

(a) In order to be certified as a Fire Officer III an individual must:

- (1) hold certification as Structural Fire Protection Personnel, Aircraft Rescue Fire Fighting Personnel, or Marine Fire Protection Personnel; and
- (2) hold Fire Officer II certification through the commission; and
- (3) hold, as a minimum, Fire Service Instructor II certification through the commission; and
- (4) document completion of ICS-300: Intermediate Incident Command System; and
- (5) possess valid documentation as a Fire Officer III from either:

(A) the International Fire Service Accreditation Congress; or

(B) the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2009 or later edition of the NFPA standard appli-

cable to this discipline and meeting the requirements as specified in §439.1[(a)(2)] of this title (relating to Requirements--General); or

(6) complete a commission approved Fire Officer III program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Fire Officer III program must consist of one of the following:

(A) completion of a commission approved Fire Officer III Curriculum as specified in Chapter 9 of the commission's Certification Curriculum Manual;

(B) completion of an out-of-state and/or military training program that has been submitted to the commission for evaluation and found to be equivalent to or exceed the commission approved Fire Officer III Curriculum; [ø]

(C) successful completion of 15 college semester hours of upper level coursework from a four-year regionally accredited institution in any of the following subject areas:

- (i) Administration/Management;
- (ii) Budget/Finance;
- (iii) Planning/Organization;
- (iv) Leadership/Ethics;
- (v) Risk Management;
- (vi) Safety and Health; [ø]
- (vii) Community Risk Reduction; or[-];
- (viii) Criminal Justice; or

(D) successful attainment of a bachelor's degree or higher from a regionally accredited institution in any of the following:

- (i) Fire Science/Administration/Management;
- (ii) Emergency Management;
- (iii) Public Administration;
- (iv) Emergency Medicine;
- (v) Business Management/Administration;
- (vi) Political Science;
- (vii) Human Resources Management;
- (viii) Public Health;
- (ix) Risk Management;
- (x) Criminal Justice; or
- (xi) a related management/administration/leadership degree.

[(7) Special temporary provision: Through February 2015, an individual is eligible for Fire Officer III certification upon documentation of the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2009 edition of the NFPA standard applicable to this discipline.]

(b) Out-of-state or military training programs which are submitted to the commission for the purpose of determining equivalency will be considered equivalent if all competencies set forth in Chapter 9 (pertaining to Fire Officer) of the commission's Certification Curriculum Manual are met.

§451.307. *International Fire Service Accreditation Congress (IF-SAC) Seal.*

~~[(a) Individuals holding a current commission Fire Officer III certification that was issued from a commission examination and received prior to September 1, 2016, may be granted an International Fire Service Accreditation Congress (IFSAC) seal as a Fire Officer III by making application to the commission for the IFSAC seal and paying applicable fees. This subsection will expire on August 31, 2017.]~~

~~[(b)] Individuals completing a commission approved Fire Officer III program; documenting IFSAC seals for Fire Fighter II, Instructor II and Fire Officer II; and passing the applicable state examination, may be granted an IFSAC seal as a Fire Officer III by making application to the commission for the IFSAC seal and paying applicable fees. In order to qualify for an IFSAC seal, an individual must submit the application for the seal prior to the expiration of the examination.~~

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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Executive Director

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For further information, please call: (512) 936-3812



SUBCHAPTER D. MINIMUM STANDARDS FOR FIRE OFFICER IV

37 TAC §451.403, §451.407

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties and §419.032, which allows the commission to appoint fire protection personnel.

The proposed amendments implement Texas Government Code, Chapter 419, §419.008 and §419.032.

§451.403 Minimum Standards for Fire Officer IV Certification.

(a) In order to be certified as a Fire Officer IV an individual must:

(1) hold certification as Structural Fire Protection Personnel, Aircraft Rescue Fire Fighting Personnel, or Marine Fire Protection Personnel; and

(2) hold Fire Officer III certification through the commission; and

(3) document completion of ICS-400: Advanced Incident Command System; and

(4) possess valid documentation as a Fire Officer IV from either:

(A) the International Fire Service Accreditation Congress; or

(B) the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2009 or later edition of the NFPA standard applicable to this discipline and meeting the requirements as specified in §439.1[(a)(2)] of this title (relating to Requirements--General); or

(5) complete a commission approved Fire Officer IV program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Fire Officer IV program must consist of one of the following:

(A) completion of a commission approved Fire Officer IV Curriculum as specified in Chapter 9 of the commission's Certification Curriculum Manual;

(B) completion of an out-of-state and/or military training program that has been submitted to the commission for evaluation and found to be equivalent to or exceed the commission approved Fire Officer IV Curriculum; or

(C) successful attainment of a bachelor's degree or higher from a regionally accredited institution in any of the following:

(i) Fire Science/Administration/Management;

(ii) Emergency Management;

(iii) Public Administration;

(iv) Emergency Medicine;

(v) Business Management/Administration;

(vi) Political Science;

(vii) Human Resources Management;

(viii) Public Health;

(ix) Risk Management;

(x) Criminal Justice; or

(xi) a related management/administration/leadership degree.

~~[(6) Special temporary provision: Through February 2015, an individual is eligible for Fire Officer IV certification upon documentation of the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2009 edition of the NFPA standard applicable to this discipline.]~~

(b) Out-of-state or military training programs which are submitted to the commission for the purpose of determining equivalency will be considered equivalent if all competencies set forth in Chapter 9 (pertaining to Fire Officer) of the commission's Certification Curriculum Manual are met.

§451.407 International Fire Service Accreditation Congress (IFSAC) Seal.

~~[(a) Individuals holding a current commission Fire Officer IV certification that was issued from a commission examination and received prior to September 1, 2016, may be granted an International Fire Service Accreditation Congress (IFSAC) seal as a Fire Officer IV by making application to the commission for the IFSAC seal and paying applicable fees. This subsection will expire on August 31, 2017.]~~

~~[(b)] Individuals completing a commission approved Fire Officer IV program; documenting IFSAC seals for Fire Fighter II, Instructor II and Fire Officer III; and passing the applicable state examination, may be granted an IFSAC seal as a Fire Officer IV by making application to the commission for the IFSAC seal and paying applicable fees. In order to qualify for an IFSAC seal, an individual must submit the application for the seal prior to the expiration of the examination.~~

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

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TRD-201704719

Tim Rutland

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: January 7, 2018

For further information, please call: (512) 936-3812



CHAPTER 459. MINIMUM STANDARDS FOR FIRE AND LIFE SAFETY EDUCATOR CERTIFICATION

37 TAC §§459.1, 459.3, 459.5

The Texas Commission on Fire Protection (the commission) proposes new Chapter 459, Minimum Standards For Fire and Life Safety Educator Certification, concerning, §459.1, Fire and Life Safety Educator I Certification, §459.3, Minimum Standards for Fire and Life Safety Educator I Certification, and §459.5, Examination Requirement.

The purpose of the proposed new chapter is to offer a new voluntary certification that has been requested by the Texas fire service for several years.

Tim Rutland, Executive Director, has determined that for each year of the first five year period the proposed new chapter is in effect, there will be no significant fiscal impact to state government or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed new chapter is in effect, the public benefit from the passage is there will be certified fire and life safety educators across the state meeting the requirements of the National Fire Protection Association Standard (NFPA) 1035.

There will be no effect on micro or small businesses or persons required to comply with the new chapter as proposed.

The agency has determined that during the first five years the new chapter is in effect:

- (1) the rule will not create or eliminate a government program;
- (2) the rule will not create new or eliminate any existing employee positions;
- (3) the new rule does not increase or decrease future legislative appropriations;
- (4) the rule will not require an increase in fees paid to the agency;
- (5) the rule will create a new regulation but will only apply to those individuals who choose to take advantage of the new certification;
- (6) the rule will not expand, limit or repeal an existing regulation;
- (7) the rule will increase the number of individuals subject to the rule because the new certification could be obtained by individuals not currently regulated by the commission; however, the certification is not mandated and is considered a voluntary certification; and
- (8) Although not anticipated to be significant, any economic impact to the state would likely be positive, as individuals holding

the certification would be delivering valuable fire safety education to communities.

Comments regarding the proposed new chapter may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The new chapter is proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties and §419.032 which allows the commission to appoint fire protection personnel.

The proposed new chapter implements Texas Government Code, Chapter 419, §419.008 and §419.032.

§459.1. Fire and Life Safety Educator I Certification.

(a) A Fire and Life Safety Educator I is defined as an individual who performs professional work in the coordination and delivery of public fire and life safety education, and fire prevention programs.

(b) All individuals holding a Fire and Life Safety Educator I certification shall be required to comply with the continuing education requirements in Chapter 441 of this title (relating to Continuing Education).

(c) A regulated entity that employs an individual certified as Fire and Life Safety Educator I must report the individual's employment via the commission's online data management system (FIDO system).

(d) Special temporary provision. Individuals are eligible to take the commission examination for Fire and Life Safety Educator I certification by:

(1) providing documentation acceptable to the commission that the individual has successfully completed Fire and Life Safety Educator I certification training that meets the minimum requirements of National Fire Protection Association Standard 1035; or

(2) providing documentation acceptable to the commission of proficiency in fire and life safety education as an employee of a government entity, a member in a volunteer fire service organization, or an employee of a regulated non-governmental fire department; or

(3) holding certification as a Fire Instructor I or higher.

(4) This subsection will expire on February 28, 2019.

§459.3. Minimum Standards for Fire and Life Safety Educator I Certification.

In order to be certified as a Fire and Life Safety Educator I, an individual must:

(1) possess valid documentation of accreditation from the International Fire Service Accreditation Congress as a Fire and Life Safety Educator I; or

(2) complete a commission approved Fire and Life Safety Educator I program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Fire and Life Safety Educator I program must consist of one of the following:

(A) completion of an in-state Fire and Life Safety Educator I program meeting the requirements of the applicable NFPA standard and conducted by a commission certified training provider, that was submitted and approved through the commission's training prior approval system; or

(B) completion of an out-of-state, educational institution of higher education, and/or military training program that has been submitted to the commission for evaluation and found to meet the requirements of the applicable NFPA standard.

§459.5. Examination Requirement.

Examination requirements in Chapter 439 of this title (relating to Examinations for Certification) must be met to receive Fire and Life Safety Educator I certification.

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

Filed with the Office of the Secretary of State on November 20, 2017.

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Tim Rutland

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: January 7, 2018

For further information, please call: (512) 936-3812



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 362. DEFINITIONS

40 TAC §362.1

The Texas Board of Occupational Therapy Examiners proposes amendments to §362.1, concerning definitions. The amendments are proposed to cleanup and clarify the section and to revise the Board's definition of telehealth.

Cleanups and clarifications pertain to amending a reference to the Occupational Therapy Practice Act under the definition of examination and to adding to the definition of jurisprudence examination that such is an online examination and that the passing score is at least seventy percent.

The definition of telehealth in the proposed amendment has been revised to more closely align it with the current definition of telehealth service in Occupations Code, §111.001, Definitions, as amended by SB 1107 from the 85th Legislative Session (Regular).

Regarding telehealth, a proposed amendment to §372.1, Provision of Services, has also been submitted to the *Texas Register* for publication. In that proposed amendment, further regulations regarding telehealth, including regarding the use of telecommunications or information technology for the delivery of occupational therapy services via telehealth, are included.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule, and the rule will not impact a local economy.

Mr. Maline has also determined that for each of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the rule will be the expansion of occupational therapy services to consumers and the clarification of occupational therapy regulations and that there is no anticipated economic cost to persons having to comply with the proposed amendment. There will be no costs or adverse economic effects on small or micro businesses or rural communities; therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendment.

The proposed amendments' impact on government growth during the first five years the rule would be in effect is as follows: does not create or eliminate a government program; does not require the creation of new employee positions or the elimination of existing employee positions; does not require an increase or decrease in future legislative appropriations to the agency; does not require an increase or decrease in fees paid to the agency; does not create a new regulation; does not increase or decrease the number of individuals subject to the rule's applicability; and neither positively nor adversely affects this state's economy. The rule repeals an existing regulation that requires telehealth services to be conducted using synchronous technology only.

Comments on the proposed amendments may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that the proposed amendment is published in the *Texas Register*.

The amendments are proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§362.1. Definitions.

The following words, terms, and phrases, when used in this part shall have the following meaning, unless the context clearly indicates otherwise.

(1) Accredited Educational Program--An educational institution offering a course of study in occupational therapy that has been accredited or approved by the Accreditation Council for Occupational Therapy Education (ACOTE) of the American Occupational Therapy Association.

(2) Act--The Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454 of the Occupations Code.

(3) AOTA--American Occupational Therapy Association.

(4) Applicant--A person who applies for a license to the Texas Board of Occupational Therapy Examiners.

(5) Board--The Texas Board of Occupational Therapy Examiners (TBOTE).

(6) Certified Occupational Therapy Assistant (COTA®)-An individual who uses this term must hold a valid regular or provisional license to practice or represent self as an occupational therapy assistant in Texas and must practice under the general supervision of an OTR® or OT. An individual who uses this term is responsible for ensuring that he or she is otherwise qualified to use it by maintaining certification with NBCOT.

(7) Class A Misdemeanor--An individual adjudged guilty of a Class A misdemeanor shall be punished by:

(A) A fine not to exceed \$4,000;

(B) Confinement in jail for a term not to exceed one year; or

(C) Both such fine and imprisonment (Vernon's Texas Codes Annotated Penal Code §12.21).

(8) Client--The entity that receives occupational therapy; also may be known as patient. Clients may be individuals (including others involved in the individual's life who may also help or be served indirectly such as a caregiver, teacher, parent, employer, spouse), groups, or populations (i.e., organizations, communities).

(9) Complete Application--Application form with photograph, license fee, jurisprudence examination with at least 70% of questions answered correctly, and all other required documents.

(10) Complete Renewal--Contains renewal fee, renewal form with continuing education submission form, home/work address(es) and phone number(s), jurisprudence examination with at least 70% of questions answered correctly, and all other required documents.

(11) Continuing Education Committee--Reviews and makes recommendations to the Board concerning continuing education requirements and special consideration requests.

(12) Coordinator of Occupational Therapy Program--The employee of the Executive Council who carries out the functions of the Texas Board of Occupational Therapy Examiners.

(13) Endorsement--The process by which the Board issues a license to a person currently licensed in another state or territory of the United States that maintains professional standards considered by the Board to be substantially equivalent to those set forth in the Act, and is applying for a Texas license for the first time.

(14) Evaluation--The process of planning, obtaining, documenting and interpreting data necessary for intervention. This process is focused on finding out what the client wants and needs to do and on identifying those factors that act as supports or barriers to performance.

(15) Examination--The Examination as provided for in §454.207 [Section 47] of the Practice Act (relating to License Examination). The current Examination is the initial certification examination given by the National Board for Certification in Occupational Therapy (NBCOT).

(16) Executive Council--The Executive Council of Physical Therapy and Occupational Therapy Examiners.

(17) Executive Director--The employee of the Executive Council who functions as its agent. The Executive Council delegates implementation of certain functions to the Executive Director.

(18) Intervention--The process of planning and implementing specific strategies based on the client's desired outcome, evaluation data and evidence, to effect change in the client's occupational performance leading to engagement in occupation to support participation.

(19) Investigation Committee--Reviews and makes recommendations to the Board concerning complaints and disciplinary actions regarding licensees and facilities.

(20) Investigator--The employee of the Executive Council who conducts all phases of an investigation into a complaint filed against a licensee, an applicant, or an entity regulated by the Board.

(21) Jurisprudence Examination--An examination covering information contained in the Texas Occupational Therapy Practice Act and Texas Board of Occupational Therapy Examiners Rules. This test is an open book, online examination with multiple choice and/or true-false questions. The passing score is at least 70%.

(22) License--Document issued by the Texas Board of Occupational Therapy Examiners which authorizes the practice of occupational therapy in Texas.

(23) Medical Condition--A condition of acute trauma, infection, disease process, psychiatric disorders, addictive disorders, or post surgical status. Synonymous with the term health care condition.

(24) NBCOT--National Board for Certification in Occupational Therapy.

(25) Non-Licensed Personnel--OT Aide or OT Orderly or other person not licensed by this Board who provides support services to occupational therapy practitioners and whose activities require on-the-job training and supervision.

(26) Non-Medical Condition--A condition where the ability to perform occupational roles is impaired by developmental disabilities, learning disabilities, the aging process, sensory impairment, psychosocial dysfunction, or other such conditions which do not require the routine intervention of a physician.

(27) Occupation--Activities of everyday life, named, organized, and given value and meaning by individuals and a culture. Occupation is everything people do to occupy themselves, including looking after themselves, enjoying life and contributing to the social and economic fabric of their communities.

(28) Occupational Therapist (OT)--An individual who holds a valid regular or provisional license to practice or represent self as an Occupational Therapist in Texas. This definition includes an Occupational Therapist or one who is designated as an Occupational Therapist, Registered (OTR®).

(29) Occupational Therapist, Registered (OTR®)--An individual who uses this term must hold a valid regular or provisional license to practice or represent self as an Occupational Therapist in Texas by maintaining registration through NBCOT.

(30) Occupational Therapy Assistant (OTA)--An individual who holds a valid regular or provisional license to practice or represent self as an Occupational Therapy Assistant in Texas, and who is required to be under the continuing supervision of an OT. This definition includes an individual who is designated as a Certified Occupational Therapy Assistant (COTA®) or an Occupational Therapy Assistant (OTA).

(31) Occupational Therapy Plan of Care--A written statement of the planned course of Occupational Therapy intervention for a client. It must include goals, objectives and/or strategies, recommended frequency and duration, and may also include methodologies and/or recommended activities.

(32) Occupational Therapy Practice--Includes:

(A) Methods or strategies selected to direct the process of interventions such as:

(i) Establishment, remediation, or restoration of a skill or ability that has not yet developed or is impaired.

(ii) Compensation, modification, or adaptation of activity or environment to enhance performance.

(iii) Maintenance and enhancement of capabilities without which performance in everyday life activities would decline.

(iv) Health promotion and wellness to enable or enhance performance in everyday life activities.

(v) Prevention of barriers to performance, including disability prevention.

(B) Evaluation of factors affecting activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:

(i) Client factors, including body functions (such as neuromuscular, sensory, visual, perceptual, cognitive) and body structures (such as cardiovascular, digestive, integumentary, genitourinary systems).

(ii) Habits, routines, roles and behavior patterns.

(iii) Cultural, physical, environmental, social, and spiritual contexts and activity demands that affect performance.

(iv) Performance skills, including motor, process, and communication/interaction skills.

(C) Interventions and procedures to promote or enhance safety and performance in activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:

(i) Therapeutic use of occupations, exercises, and activities.

(ii) Training in self-care, self-management, home management and community/work reintegration.

(iii) Development, remediation, or compensation of physical, cognitive, neuromuscular, sensory functions and behavioral skills.

(iv) Therapeutic use of self, including one's personality, insights, perceptions, and judgments, as part of the therapeutic process.

(v) Education and training of individuals, including family members, caregivers, and others.

(vi) Care coordination, case management and transition services.

(vii) Consultative services to groups, programs, organizations, or communities.

(viii) Modification of environments (home, work, school, or community) and adaptation of processes, including the application of ergonomic principles.

(ix) Assessment, design, fabrication, application, fitting and training in assistive technology, adaptive devices, and orthotic devices, and training in the use of prosthetic devices.

(x) Assessment, recommendation, and training in techniques to enhance functional mobility including wheelchair management.

(xi) Driver rehabilitation and community mobility.

(xii) Management of feeding, eating, and swallowing to enable eating and feeding performance.

(xiii) Application of physical agent modalities, and use of a range of specific therapeutic procedures (such as wound care management; techniques to enhance sensory, perceptual, and cognitive processing; manual therapy techniques) to enhance performance skills.

(33) Occupational Therapy Practitioners--Occupational Therapists and Occupational Therapy Assistants licensed by this Board.

(34) Outcome--The focus and targeted end objective of occupational therapy intervention. The overarching outcome of occupational therapy is engagement in occupation to support participation in context(s).

(35) Place(s) of Business--Any facility in which a licensee practices.

(36) Practice--Providing occupational therapy as a clinician, practitioner, educator, or consultant to clients located in Texas at the time of the provision of occupational therapy services. Only a person holding a license from this Board may practice occupational therapy in Texas, and the site of practice is the location in Texas where the client is located at the time of the provision of services.

(37) Rules--Refers to the TBOTE Rules.

(38) Screening--A process used to determine a potential need for occupational therapy interventions, educational and/or other client needs. Screening information may be compiled using observation, client records, the interview process, self-reporting, and/or other documentation.

(39) Telehealth--A mode of service delivery for the provision of occupational therapy services delivered by an occupational therapy practitioner to a client at a different physical location using telecommunications or information technology [through the use of visual and auditory, synchronous, real time, interactive electronic information/communications technologies. As a mode of service delivery, telehealth is contact with the client and the occupational therapy practitioner(s)]. Telehealth refers only to the practice of occupational therapy by occupational therapy practitioners who are licensed by this Board with clients who are located in Texas at the time of the provision of occupational therapy services. Also may be known as other terms including but not limited to telepractice, telecare, telerehabilitation, and e-health services.

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

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John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

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For further information, please call: (512) 305-6900



CHAPTER 363. CONSUMER/LICENSEE INFORMATION

40 TAC §363.3, §363.4

The Texas Board of Occupational Therapy Examiners proposes new rules §363.3, concerning negotiated rulemaking, and §363.4, concerning alternative dispute resolution. The new rules are proposed in order to comply with statutory amendments to §454.108 of the Occupational Therapy Practice Act regarding

establishing a policy on Negotiated Rulemaking and Alternative Dispute Resolution.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed new rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules, and the rules will not impact a local economy.

Mr. Maline has also determined that for each of the first five years the proposed new rules are in effect, the public benefit anticipated as a result of enforcing the rules will be the clarification of occupational therapy regulations and that there is no anticipated economic cost to persons having to comply with the rules. There will be no costs or adverse economic effects on small or micro businesses or rural communities; therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendment.

The proposed new rules' impact on government growth in the first five years the proposed rules will be in effect is as follows: does not create or eliminate a government program; does not require the creation of new employee positions or the elimination of existing employee positions; does not require an increase or decrease in future legislative appropriations to the agency; does not require an increase or decrease in fees paid to the agency; does create a new regulation; does expand the existing powers and duties of the board; does not increase or decrease the number of individuals subject to the rules' applicability; and neither positively nor adversely affects this state's economy.

Comments on the proposed new rules may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that these proposed new rules are published in the *Texas Register*.

The new rules are proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§363.3. Negotiated Rulemaking.

It is the policy of the Board to engage in negotiated rulemaking procedures consistent with Texas Government Code, Chapter 2008, when appropriate.

§363.4. Alternative Dispute Resolution.

It is the policy of the Board to use alternative dispute resolution where appropriate consistent with Texas Government Code, Chapter 2009, and any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

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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John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

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For further information, please call: (512) 305-6900



CHAPTER 367. CONTINUING EDUCATION

40 TAC §367.2, §367.4

The Texas Board of Occupational Therapy Examiners proposes an amendment to §367.2, concerning categories of education, and proposes a new rule, §367.4, concerning a process for selecting a peer organization to evaluate and approve continuing education courses. The amendment is proposed to clarify, cleanup, and revise the section regarding continuing education requirements. The new rule establishes a process for selecting a peer organization to evaluate and approve continuing education courses as required by recent statutory changes to §454.254(e) of the Occupational Therapy Practice Act.

The proposed amendment to §367.2 includes a cleanup regarding the continuing education documentation for home study courses, educational teleconferences, Internet-based courses, and video instruction to include that such may include a letter of verification. The amendment, furthermore, clarifies the continuing education documentation requirement for presentations by licensees to include that documentation shall include verification of presentation. In the amendment, a reference to documentation for this activity including a brochure or conference guide has been removed. Another revision is to remove the reference to TBOTE, the Texas Board of Occupational Therapy Examiners, from a provision regarding participation in volunteer activities related to occupational therapy for the purpose of tangible outcomes such as official documents, publications, and official reports.

Proposed new rule §367.4 would add to the Board Rules that if the Board chooses to authorize a license holder peer organization in Texas to evaluate and approve continuing education courses, the Board will conduct a request for proposals and bid process to select an organization and will request bids and proposals at least once every four years. New rule §367.4 is proposed pursuant to recent statutory changes to the Occupational Therapy Practice Act §454.254(e) during the 85th Legislative Session (Regular).

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed rule amendment and new rule are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules, and the rules will not impact a local economy.

Mr. Maline has also determined that for each of the first five years the proposed rule amendment and new rule are in effect, the public benefit anticipated as a result of enforcing the rules will be the clarification of occupational therapy regulations and that there is no anticipated economic cost to persons having to comply with the rules. There will be no costs or adverse economic effects on small or micro businesses or rural communities; therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendment and new rule.

The proposed rule amendment's and new rule's impact on government growth during the first five years the rules would be in effect is as follows: does not create or eliminate a government program; does not require the creation of new employee positions or the elimination of existing employee positions; does not require an increase or decrease in future legislative appropriations to the agency; does not require an increase or decrease in fees paid to the agency; does create a new regulation; does expand the existing powers and duties of the Board; does not increase or decrease the number of individuals subject to the rules' applicability; and neither positively nor adversely affects this state's economy.

Comments on the proposed rule amendment and new rule may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that the proposal is published in the *Texas Register*.

The proposed rule amendment and new rule are proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§367.2. Categories of Education.

Continuing education activities completed by the licensee for license renewal shall be acceptable if falling under one or more of the following categories and meeting further requirements in this chapter.

(1) Formal academic courses from an occupational therapy program.

(A) Completion of course work at or through an accredited college or university shall be counted as follows: three CE hours for each credit hour of a course with a grade of A, B, C, and/or P (Pass). Thus a three-credit course counts for 9 contact hours of continuing education, no maximum. Documentation of this type of CE credit shall include a transcript from the accredited college or university.

(B) Creation of a new course or courses at or through an accredited college or university may be counted for 10 hours maximum. Proof of this type of CE shall be a letter from the Program Director.

(2) In-service educational programs, training programs, institutes, seminars, workshops, facility based courses, and conferences with specified learning objectives. Hour for hour credit on program content only, no maximum. Documentation of this type of CE credit shall include a certificate of completion or letter of verification.

(3) Development of publications, media materials or research/grant activities per two year renewal period: Documentation of this type of CE credit shall include a copy of the actual publication or media material(s), or title page and receipt of grant proposal.

(A) Published scholarly work in a peer-review journal:

(i) Primary or second author, 15 hours maximum.

(ii) Other author, consultant, reviewer, or editor, 5 hours maximum.

(B) Grant or research proposals accepted for consideration:

(i) Principal investigator or co-principal investigator, 10 hours maximum.

(ii) Consultant or reviewer, 4 hours maximum.

(C) Published book:

(i) Primary author or book editor, 15 hours maximum.

(ii) Second or other author, 7 hours maximum.

(iii) Consultant or reviewer, 5 hours maximum.

(D) Published book chapter or monograph:

(i) Primary author, 7 hours maximum.

(ii) Second or other author, consultant, reviewer, or editor, 2 hours maximum.

(E) Author, consultant, reviewer, or editor of other practice related publications such as newsletters, blogs, and trade magazines, 2 hours maximum.

(F) Developer of practice-related or instructional materials using alternative media such as video, audio, or software programs or applications to advance the professional skills of others (not for proprietary use), 15 hours maximum.

(4) Home study courses, educational teleconferences, Internet-based courses, and video instruction, no maximum.

(A) These courses must have:

(i) Specified learning objectives;

(ii) A post-test; and

(iii) A certificate of completion or letter of verification.

(B) Educational teleconferences or Internet courses must reflect a pre-determined number of contact hours.

(5) Presentations by licensee: Documentation of this type of CE credit shall include [a letter of] verification of presentation [and number of hours for the presentation or copy of organization's brochure or conference guide] noting the date, title, and number of contact hours of the presentation, presenter(s), and type of presentation (i.e., [] 2 hour poster, 3 hour workshop).

(A) Professional presentation, e.g. in-services, workshops, institutes: Any presentation counted only one time. Hour for hour credit. 10 hours maximum.

(B) Community/Service organization presentation: Any presentation counted once. Hour for hour credit. 10 hours maximum.

(6) Fieldwork Supervision: 10 hours maximum.

(A) A licensee may earn 2 contact hours for each Level 1 student supervised:

(i) 40 hours of Level 1 equals 1 hour of CE; or

(ii) 80 hours of Level 1 equals 2 hours of CE.

(B) A licensee may earn 8 contact hours for each Level 2 student supervised:

(i) 8 weeks equals 6 hours of CE; or

(ii) 12 weeks equals 8 hours of CE.

(C) A licensee may earn a maximum of 10 contact hours for fieldwork supervision per renewal period.

(D) Fieldwork supervision hours may be evenly divided between licensees, not to exceed two fieldwork educators per student.

(E) Fieldwork supervision must be completed before the licensee's renewal date.

(F) Documentation of this type of CE credit shall include verification provided by the school to the fieldwork educator(s) with the name of the student, level of fieldwork, school, and dates or hours of fieldwork or the signature page of the completed evaluation form. Evaluation scores and comments should be deleted or blocked out.

(7) Mentorship:

(A) Participation as a mentor or mentee for the purpose of the development of occupational therapy skills by a mentee under the guidance of a mentor skilled in a particular occupational therapy area. Both the mentor and mentee must hold a regular OT or OTA license in a state or territory of the U.S. Supervision hours as per §373.3 of this title (relating to Supervision of an Occupational Therapy Assistant) are not eligible for continuing education hours.

(B) Documentation shall include a signed mentorship agreement between a mentor and mentee that outlines specific goals and objectives and designates the plan of activities that are to be met by the mentee; the names of both mentor and mentee and their license numbers and issuing states; an activity log that corresponds to the mentorship agreement and lists dates and hours spent on each objective-based activity; a final evaluation of the outcomes of the mentorship agreement completed by the mentor; and a final evaluation of the outcomes of the mentorship agreement completed by the mentee.

(C) Participation as a Mentee: A licensee may earn one hour of CE for each 3 hours spent in activities as a mentee directly related to the achievement of goals and objectives up to a maximum of 15 CE hours.

(D) Participation as Mentor: A licensee may earn one hour of CE for each 5 hours spent in activities as a mentor up to a maximum of 10 CE hours.

(8) Participation in volunteer activities related to occupational therapy including service on a committee, board, or commission of a state occupational therapy association, AOTA, or NBCOT[; ~~or TBOTE~~] for the purpose of tangible outcomes such as official documents, publications, and official reports. Documentation of this type of CE credit shall include a copy of the actual publication or official document/report which reflects the licensee's name. Maximum of 10 contact hours.

(9) NBCOT Navigator™ Activities: Licensees may earn up to 2 contact hours of CE for the completion of NBCOT Navigator activities. For such activities, 1 NBCOT CAU is the equivalent of .25 CE hours. Documentation of this type of CE is a certificate of completion or letter of verification. Self-reflections and self-assessments, reading list and research portal activities, professional development plans, or similar activities are not eligible for CE credit.

(10) Any deviation from the continuing education categories will be reviewed on a case by case basis by the Coordinator of Occupational Therapy or by the Continuing Education Committee. A request for special consideration must be submitted in writing a minimum of 60 days prior to expiration of the license.

§367.4. Process for Selecting a Peer Organization to Evaluate and Approve Continuing Education Courses.

If the Board chooses to authorize a license holder peer organization in Texas to evaluate and approve continuing education courses:

(1) The Board will conduct a request for proposals and bid process to select an organization, and

(2) The Board will request bids and proposals at least once every four years.

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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John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

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For further information, please call: (512) 305-6900



CHAPTER 372. PROVISION OF SERVICES

40 TAC §372.1

The Texas Board of Occupational Therapy Examiners proposes amendments to §372.1, concerning provision of services. The amendments are proposed to cleanup and clarify the section in general and to revise and clarify the section's regulations regarding occupational therapy services provided via telehealth and modifications to the plan of care.

The amendments to the section would remove the requirement that the initial evaluation for a medical condition must be conducted in person and may not be conducted via telehealth. New language instead would include that the occupational therapist is responsible for determining whether any aspect of the evaluation may be conducted via telehealth or must be conducted in person. The amendments would also remove current language that the occupational therapist must have real time interaction with the client during the evaluation process either in person or via telehealth to instead include that the occupational therapist must have contact with the client during the evaluation via telehealth using synchronous audiovisual technology or in person. The amendments would also add that other telecommunications or information technology may be used to aid in the evaluation but may not be the primary means of contact or communication. The amendments, in addition, would remove that the occupational therapy practitioners must have real time interaction with the client during the intervention process either in person or via telehealth and instead would include that the occupational therapy practitioners must have contact with the client during the intervention session via telehealth using synchronous audiovisual technology or in person. The amendments would add, as well, that other telecommunications or information technology may be used to aid in the intervention session but may not be the primary means of contact or communication. The amendments would, additionally, include that except where otherwise restricted by rule, the occupational therapy practitioner is responsible for determining whether any aspect of the intervention session may be conducted via telehealth or must be conducted in person. Concurrent with these changes, the provision requiring that the occupational therapist is responsible for determining whether any aspect of the provision of services may be conducted via telehealth or must be conducted in person has been removed in the proposal.

Regarding telehealth, a proposed amendment to §362.1, concerning definitions, has also been submitted to the *Texas Register* for publication. The definition of telehealth in the proposed amendment to §362.1 has been revised to more closely align it with the current definition of telehealth service in Occupations Code, §111.001, Definitions, as amended by SB 1107 from the 85th Legislative Session (Regular).

The amendments to §372.1 would also remove language that the occupational therapist and an occupational therapy assistant may work jointly to revise the short-term goals, but the final determination resides with the occupational therapist and that revisions to the plan of care and goals must be documented by the occupational therapist and/or occupational therapy assistant to reflect revisions at the time of the change. The amendment would add instead that modifications to the plan of care must be documented.

The amendments includes further cleanups and clarifications including adding the phrase "discontinuation of occupational therapy services" under applicable provisions regarding a discharge.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule, and the rule will not impact local economies.

Mr. Maline has also determined that for each of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the rule will be the expansion of occupational therapy services to consumers and the clarification of occupational therapy regulations and that there is no anticipated economic cost to persons having to comply with the proposed amendment. There will be no costs or adverse economic effects on small or micro businesses or rural communities; therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendment.

The proposed amendments' impact on government growth during the first five years the rule would be in effect is as follows: does not create or eliminate a government program; does not require the creation of new employee positions or the elimination of existing employee positions; does not require an increase or decrease in future legislative appropriations to the agency; does not require an increase or decrease in fees paid to the agency; does not create a new regulation; does not increase or decrease the number of individuals subject to the rule's applicability; and neither positively nor adversely affects this state's economy. The proposed rule repeals existing regulations that limit the use of telehealth.

Comments on the proposed amendments may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that the proposed amendment is published in the *Texas Register*.

The amendments are proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§372.1. *Provision of Services.*

~~{(a) The occupational therapist is responsible for determining whether any aspect of the provision of services may be conducted via telehealth or must be conducted in person.}~~

~~(a) [(b)] Medical Conditions.~~

~~(1) Occupational therapists may [provide consultation or monitored services; or screen or] evaluate the client to determine the need for occupational therapy services without a referral. However, a referral must be requested at any time during the evaluation process when necessary to ensure the safety and welfare of the client.~~

~~{(2) The initial evaluation for a medical condition must be conducted in person and may not be conducted via telehealth.}~~

~~(2) [(3)] Intervention for a medical condition by an occupational therapy practitioner requires a referral from a licensed referral source.~~

~~(b) Non-Medical Conditions. The evaluation or intervention for a non-medical condition does not require a referral. However, a referral must be requested at any time during the evaluation or intervention process when necessary to ensure the safety and welfare of the client.~~

~~{(c) Non-Medical Conditions. }~~

~~{(1) Consultation, monitored services, screening, and evaluation for need of services may be provided without a referral. }~~

~~{(2) Non-medical conditions do not require a referral. However, a referral must be requested at any time during the evaluation or intervention process when necessary to ensure the safety and welfare of the client.}~~

~~(c) [(d)] Methods of Referral. The referral must be from a licensed referral source in accordance with the Practice Act, §454.213 (relating to Accepted Practice; Practitioner's Referral), and may be transmitted in the following ways:~~

~~(1) in a written document, including faxed and emailed documents; or~~

~~(2) verbally, either in person or by electronic information/communications technologies. If a referral is transmitted verbally, it must be documented by the authorized personnel who receives the referral. In this section, "authorized personnel" means staff members authorized by the employer or occupational therapist to receive referrals transmitted verbally.~~

~~(d) [(e)] Screening, Consultation, and Monitored Services. A screening, consultation, or monitored services may be performed by an occupational therapy practitioner without a referral.~~

~~(e) [(f)] Evaluation.~~

~~(1) Only an occupational therapist may perform an initial evaluation or any re-evaluations.~~

~~(2) An occupational therapy plan of care must be based on an occupational therapy evaluation.~~

~~(3) The occupational therapist is responsible for determining whether any aspect of the evaluation may be conducted via telehealth or must be conducted in person.~~

~~(4) [(3)] The occupational therapist must have contact [real time interaction] with the client during the evaluation [process either in person or] via telehealth using synchronous audiovisual technology or in person. Other telecommunications or information technology may be used to aid in the evaluation but may not be the primary means of contact or communication.~~

(5) [(4)] The occupational therapist may delegate to an occupational therapy assistant or temporary licensee the collection of data for the evaluation [assessment]. The occupational therapist is responsible for the accuracy of the data collected by the assistant.

(f) [(g)] Plan of Care.

(1) Only an occupational therapist may initiate, develop, modify or complete an occupational therapy plan of care. It is a violation of the OT Practice Act for anyone other than the [evaluating or treating] occupational therapist to dictate, or attempt to dictate, when occupational therapy services should or should not be provided, the nature and frequency of services that are provided, when the client should be discharged, or any other aspect of the provision of occupational therapy as set out in the OT Act and Rules.

(2) Modifications to the plan of care must be documented.

[(2) The occupational therapist and an occupational therapy assistant may work jointly to revise the short-term goals, but the final determination resides with the occupational therapist. Revisions to the plan of care and goals must be documented by the occupational therapist and/or occupational therapy assistant to reflect revisions at the time of the change.]

(3) An occupational therapy plan of care may be integrated into an interdisciplinary plan of care, but the occupational therapy goals or objectives must be easily identifiable in the plan of care.

(4) Only occupational therapy practitioners may implement the written plan of care once it is completed by the occupational therapist.

(5) Only the occupational therapy practitioner may train non-licensed personnel or family members to carry out specific tasks that support the occupational therapy plan of care.

(6) The occupational therapist is responsible for determining whether intervention is needed and if a referral is required for occupational therapy intervention.

(7) Except where otherwise restricted by rule, the occupational therapy practitioner is responsible for determining whether any aspect of the intervention session may be conducted via telehealth or must be conducted in person.

(8) [(7)] The occupational therapy practitioners must have contact [real time interaction] with the client during the intervention session [process either in person or] via telehealth using synchronous audiovisual technology or in person. Other telecommunications or information technology may be used to aid in the intervention session but may not be the primary means of contact or communication.

(9) [(8)] Devices that are in sustained skin contact with the client (including but not limited to wheelchair positioning devices, splints, hot/cold packs, or [and] therapeutic tape) require the on-site and attending presence of the occupational therapy practitioner for any initial applications. The occupational therapy practitioner is responsible for determining the need to be on-site and attending for subsequent applications or modifications.

(10) [(9)] Except where otherwise restricted by rule, the supervising occupational therapist may only delegate to an occupational therapy assistant or temporary licensee tasks that they both agree are within the competency level of that occupational therapy assistant or temporary licensee.

(g) [(h)] Documentation.

(1) The client's records include the medical referral, if required, and the plan of care. The plan of care includes the initial

[examination and] evaluation; the goals and any updates or change of the goals; the documentation of each intervention session by the OT or OTA providing the service; progress notes and any re-evaluations, if required; any patient related documents [written communication]; and the discharge or discontinuation of occupational therapy services documentation.

(2) The licensee providing occupational therapy services must document for each intervention session. The documentation must accurately reflect the intervention, decline of intervention, and/or modalities provided.

(3) The occupational therapy assistant must include the name of a supervising OT in each intervention note. This may not necessarily be the occupational therapist who wrote the plan of care, but an occupational therapist who is readily available to answer questions about the client's intervention at the time of the provision of services. If this requirement is not met, the occupational therapy assistant may not provide services.

(h) [(i)] Discharge or Discontinuation of Occupational Therapy Services.

(1) Only an occupational therapist has the authority to discharge clients from occupational therapy services. The discharge or discontinuation of occupational therapy services is based on whether the client has achieved predetermined goals, has achieved maximum benefit from occupational therapy services, or when other circumstances warrant discontinuation of occupational therapy services.

(2) The occupational therapist must review any information from the occupational therapy assistant(s), determine if goals were met or not, complete and sign the discharge or discontinuation of occupational therapy services documentation, and/or make recommendations for any further needs of the client in another continuum of care.

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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John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

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PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 711. INVESTIGATIONS OF INDIVIDUALS RECEIVING SERVICES FROM CERTAIN PROVIDERS

The Texas Health and Human Services Commission (HHSC) proposes amendments to the Texas Administrative Code (TAC) Title 40, Part 19, Chapter 711, including amendments to §711.7 concerning What does APS not Investigate Under this Chapter?; §711.17 concerning How is Verbal/Emotional abuse Defined?; §711.19 concerning How is Neglect Defined?; §711.21 concerning How is exploitation defined?; §711.405 concerning

What Action does the Investigator Take if the Alleged Perpetrator is a Licensed Professional?; §711.415 concerning What are the Requirements for Face-to-Face Contact with the Alleged Victim?; §711.419 concerning What if the Investigator cannot complete the Investigation on Time?; §711.603 concerning What is Included in the Investigation Report?; and §§711.901, 711.903, 711.905, 711.907, 711.909, 711.911, 711.913, and 711.915 concerning Appealing the Investigation Finding; and the repeal of §711.425 concerning How are Allegations Classified?

BACKGROUND AND PURPOSE

The amendments and repeal are intended to streamline administrative processes and address specific challenges experienced through the expanded scope and jurisdiction of Adult Protective Services (APS), while providing quality investigations to vulnerable individuals receiving services.

Senate Bills (SBs) 760 and 1880, 84(R), 2015, expanded the scope and jurisdiction of the APS Provider Investigations (PI) program to resolve gaps, inconsistencies, and ambiguities in the investigation of abuse, neglect and exploitation of individuals receiving Medicaid home and community-based services. The expansion ensured Texas was in compliance with revised Centers for Medicare and Medicaid Services requirements to ensure the health and welfare of consumers. SBs 760 and 1880 also brought the APS statutory framework up to date regarding the transition to managed care from the 83rd Legislature.

With the expanded scope and jurisdiction, APS PI intakes increased 73% overall from FY 15 to FY 16, but completed investigations increased by only 5%. Intakes increased most notably for neglect and exploitation allegation categories. For allegations of exploitation, intakes increased 374% from FY 15 to FY 16, then another 56% from FY 16 to FY 17.

APS has applied different strategies to manage the workload which includes; procedural efficiencies, working overtime, and temporarily reassigning caseworkers from across the state to crisis areas. Despite these strategies, APS PI has not been able to remain current with the increased case load. HHSC proposes rule changes to increase efficiencies associated with PI workload, while aligning PI responsibilities with the scope and jurisdiction provided in statute.

SECTION-BY-SECTION SUMMARY

The proposed amendments to §711.7 describe the types of situations that are not subject to investigation by APS PI. The changes specify that allegations related to loans made by an individual receiving services, exploitation less than \$25.00, theft, and situations involving licensed professionals would not be within the scope for investigation by APS PI.

The proposed amendments to §711.17 modify the definition of verbal/emotional abuse by specifying the type of information that qualifies as an allegation of verbal/emotional abuse. Specifically, the change removes "curse" from the definition and focuses on more serious verbal abuse, such as humiliation and vilification of an individual.

The proposed amendment to §711.19 clarifies the definition of neglect as it applies to allegations within institutional settings and private residential settings.

The proposed amendment to §711.21 clarifies the definition of exploitation to exclude those allegations that would not be within the scope for investigation by APS PI. The changes specify that

allegations related to loans made by an individual receiving services, exploitation less than \$25.00, and theft are excluded.

The proposed amendments to §711.405 remove any licensed professional as an alleged perpetrator for investigation by APS PI. Licensed professionals are not eligible for the employee misconduct registry and are licensed through a professional state board. The amendments provide for referral of any act by the licensed professional, to the provider and appropriate professional licensing board.

The proposed amendment to §711.415 changes the requirements for a face-to-face contact with the alleged victim. The change creates greater flexibility and allows the investigator to determine when a face-to-face contact is appropriate, specifically expanding the face-to-face exemption to any allegation type when there is no injury or risk of harm to the individual.

The proposed amendment to §711.419 changes the requirements for requesting and processing an extension request. The change removes timeframes and some administrative functions related to investigation extensions, to allow for increased efficiencies in processes and resource allocation.

The repeal of §711.425 would remove the requirement for APS PI to classify allegations, which will align with the current practice of the classification of allegations being performed by Health and Human Service departments based on their program specific rules.

The proposed amendment to §711.603 changes the information required in the APS Final Abuse and Neglect Report by reducing the amount of documentation requirements in the report. The change aligns the report content and format with stakeholder feedback.

The proposed amendments to §§711.901, 711.903, 711.905, 711.907, 711.909, 711.911, 711.913, and 711.915 change the manner in which an appeal of the finding may be requested. The changes provide the correct address to submit appeal requests. The changes align the appeal process with the current organizational structure of APS PI within HHSC and provides accurate contact information to a requestor.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the sections 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.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC/APS PI has determined that during the first five years that the section(s) will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of employee positions;
- (3) implementation of the proposed rules will not require an increase or decrease in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to the agency;
- (5) the proposed rules will not create a new rule;
- (6) the proposed rules will expand, limit, and repeal existing rule;

(7) the proposed rules will not change the number of individuals subject to the rule; and

(8) the proposed rules will not affect the state's economy.

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

Ms. Rymal has also determined that there will be no adverse impact on small businesses, micro-businesses, and rural communities required to comply with the rules as proposed.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and does not impose a cost on regulated persons.

PUBLIC BENEFIT

Diana Choban, Director for APS Provider Investigations, has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections will be an increase in completed investigations, a decrease in the case backlog, and higher quality investigations of abuse, neglect, and exploitation by APS PI.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Diana Choban, APS PI Director, 14000 Summit Dr., Austin, Texas 78728; by fax to (512) 339-5920; or by e-mail to APSPolicy@dfps.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 18R009" in the subject line.

SUBCHAPTER A. INTRODUCTION

40 TAC §§711.7, 711.17, 711.19, 711.21

STATUTORY AUTHORITY

The amendments are authorized by Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies.

The amendments implement HRC §42.042.

§711.7. What does APS not investigate under this chapter?

APS does not investigate:

- (1) if another branch of HHSC [~~DFPS~~] or another state agency is responsible under state law for the investigation;
 - (2) general complaints such as:
 - (A) rights violations;
 - (B) daily administrative operations;
 - (3) loans made by an individual receiving services to a provider;
 - (4) allegations of exploitation less than \$25.00;
 - (5) theft, as defined in Chapter 31 of the Texas Penal Code;
 - (6) allegations involving licensed professionals serving in the capacity under the licensure; or
 - (7) [~~(3)~~] operational issues related to the business of managed care or consumer directed services. [~~or~~]
- [~~(4) if the allegation involves only the clinical practice of a licensed professional.~~]

§711.17. How is verbal/emotional abuse defined?

(a) In this chapter, when the alleged perpetrator is a direct provider, verbal/emotional abuse is defined as [~~any act or use of verbal or other communication, including gestures, to~~]:

- (1) the willful infliction of an act or repeated acts of verbal or other communication, including gestures, to harass, intimidate, humiliate [~~curse, vilify,~~] or degrade an individual receiving services; or
- (2) threats of physical or emotional harm against [~~threaten~~] an individual receiving services [~~with physical or emotional harm~~].

(b) In order for the definition of verbal/emotional abuse to be met, the act or communication must result in an individual receiving services experiencing:

- (1) significant impairment to his or her physical, mental, or emotional health [~~result in observable distress or harm to the individual receiving services~~]; or
- (2) substantial physical, mental, or emotional distress as identified by an appropriate medical professional [~~be of such a serious nature that a reasonable person would consider it harmful or causing distress~~].

§711.19. How is neglect defined?

(a) In this chapter, when the alleged perpetrator is a direct provider to an individual receiving services in or from a facility, local authority, community center, or HCS waiver program or TxHML waiver program provider, neglect is defined as a negligent act or omission which caused or may have caused physical or emotional injury or death to an individual receiving services or which placed an individual receiving services at risk of physical or emotional injury or death.

(b) Examples of neglect may include, but are not limited to, the failure to:

- (1) establish or carry out an appropriate individual program plan or treatment plan for a specific individual receiving services, if such failure results in physical or emotional injury or death to an individual receiving services or which placed an individual receiving services at risk of physical or emotional injury or death;
- (2) provide adequate nutrition, clothing, or health care to a specific individual receiving services in a residential or inpatient pro-

gram if such failure results in physical or emotional injury or death to an individual receiving services or which placed an individual receiving services at risk of physical or emotional injury or death; or

(3) provide a safe environment for a specific individual receiving services, including the failure to maintain adequate numbers of appropriately trained staff, if such failure results in physical or emotional injury or death to an individual receiving services or which placed an individual receiving services at risk of physical or emotional injury or death.

(c) In this chapter, when the alleged perpetrator is a direct provider to an individual receiving services from any other services provider, neglect is defined as a negligent act or omission which caused physical or emotional injury or death to an individual receiving services.

§711.21. *How is exploitation defined?*

[(a)] In this chapter, when the alleged perpetrator is a direct provider to an individual receiving services [in or from a facility, local authority, community center, or HCS waiver program or TxHML waiver program provider], exploitation [is]

[(1)] is defined as the illegal or improper act or process of using an individual receiving services or the resources of an individual receiving services for monetary or personal benefit, profit, or gain, [is] and excludes:

(1) [(2)] [excludes] theft as defined in Chapter 31 of the Texas Penal Code; [-]

(2) allegations of exploitation less than \$25.00; and

(3) a loan made by an individual receiving services as defined by Texas Human Resources Code Chapter 48, Subchapter F.

[(b)] In this chapter when the alleged perpetrator is a direct provider to an individual receiving services from any other services provider, exploitation [is]

[(1)] is defined as the illegal or improper act or process of using or attempting to use an individual receiving services or the resources of an individual receiving services for monetary or personal benefit, profit, or gain, and]

[(2)] includes theft as defined in Chapter 31, of the Texas Penal Code.]

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

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Karen Ray

Chief Counsel

Department of Family and Protective Services

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For further information, please call: (512) 339-5920



SUBCHAPTER E. CONDUCTING THE INVESTIGATION

40 TAC §§711.405, 711.415, 711.419

The amendments are authorized by Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies.

The amendments implement HRC §42.042.

§711.405. *What action does the investigator take if the alleged perpetrator is a licensed professional?*

(a) If the [The] investigator determines [whether] the allegation involves a licensed professional serving in a capacity under the licensure at the time of the alleged abuse, neglect, or exploitation, [clinical practice by consultation with an appropriate professional, and in state hospitals, in accordance with 25 TAC §417.509 (relating to Peer Review)].

[(b)] [If the allegation is determined to involve clinical practice, the investigator refers the allegation to the service provider for peer or professional review. If the service provider does not have a peer or professional review process,] the investigator refers the allegation back to the service provider and forwards the allegation to [as well as] the appropriate professional licensing board.

(b) If the investigator determines the alleged perpetrator is a licensed professional but was not serving in a capacity under the licensure at the time of the alleged abuse, neglect, or exploitation, the investigator investigates the alleged abuse, neglect, or exploitation.

(c) If there are multiple allegations, the investigator:

(1) refers any allegation involving a licensed professional serving in a capacity under the licensure back to the service provider and forwards the allegations to the appropriate professional licensing board; and

(2) investigates any allegation:

(A) involving a licensed professional not serving in a capacity under the licensure, or

(B) not involving a licensed professional.

[(c)] If the allegation is determined to not involve clinical practice, the investigator investigates the allegation.]

[(d)] If there are multiple allegations, the investigator refers any allegation involving clinical practice to the service provider for peer/professional review and investigates any allegation not involving clinical practice.]

§711.415. *What are the requirements for face-to-face contact with the alleged victim?*

(a) The investigator makes a face-to-face contact with the alleged victim except when the intake alleges any allegation type [is]

[(1)] Exploitation as the only allegation type and the total alleged exploitation amount is less than \$25.00; or]

[(2)] [Neglect] when there is no physical or emotional injury to the alleged victim and no risk of physical or emotional injury or death to the alleged victim.

(b) If during the course of an investigation the investigator determines a face-to-face contact with the alleged victim is necessary, the investigator conducts such contact. [makes a face-to-face contact with the alleged victim within the time frames provided in subsection (e) of this section.]

[(e)] [When required, the investigator makes a face-to-face contact with the alleged victim within the following time frames:]

[Figure: 40 TAC §711.415(e)]

§711.419. *What if the investigator cannot complete the investigation on time?*

(a) If additional time is required to complete the investigation, the investigator must request an extension by submitting an extension request [Extension Request form] to the appropriate [APS] program administrator or designee.

(b) The [APS] program administrator or designee may grant an extension for good cause [for one to 14 calendar days depending on the needs of the investigation].

(c) The investigator notifies [must notify] the service provider of the extension [all extensions].

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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Karen Ray
Chief Counsel
Department of Family and Protective Services
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For further information, please call: (512) 339-5920



40 TAC §711.425

The repeal is authorized by Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies.

The repeal implements HRC §42.042.

§711.425. *How are allegations classified?*

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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Karen Ray
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Department of Family and Protective Services
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SUBCHAPTER G. RELEASE OF REPORT AND FINDINGS

40 TAC §711.603

The amendments are authorized by Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies.

The amendments implement HRC §42.042.

§711.603. *What is included in the investigative report?*

The investigative report includes the following:

- (1) a statement of the allegation(s);
- (2) a summary of the investigation;
- (3) an analysis of the evidence[; including:
 - [(A) factual information related to what occurred;]
 - [(B) how the evidence was weighed; and]
 - [(C) what testimony was considered credible;]
- (4) a finding that the allegation is confirmed, unconfirmed, inconclusive, or unfounded;
- (5) concerns and recommendations, if any, resulting from the investigation;
- (6) the name of the perpetrator or alleged perpetrator[; designated in accordance with §711.423 or this title (relating to Is the investigator required to designate a perpetrator or alleged perpetrator?)];

[(7) a recommended classification for each allegation assigned in accordance with §711.425 of this title (relating to How are allegations classified?)];

[(8) the physician's or other health care professional's exam and treatment of abuse/neglect related injuries documented on the DADS or DSHS Client Injury/Incident Report for state supported living centers or state hospitals;]

[(7) [(9)] photographs relevant to the investigation, including photographs showing the existence of injuries or the non-existence of injuries, when appropriate; and]

[(8) [(10)] all witness statements and supporting documents.]; and]

[(11) a signed and dated Client Abuse and Neglect Report (AN-1-A) form, as appropriate, reflecting the information contained in paragraphs (4), (6), and (7) of this section.]

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

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Karen Ray
Chief Counsel
Department of Family and Protective Services
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For further information, please call: (512) 339-5920



SUBCHAPTER J. APPEALING THE INVESTIGATION FINDING

40 TAC §§711.901, 711.903, 711.905, 711.907, 711.909, 711.911, 711.913, 711.915

The amendments are authorized by Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commis-

sioner shall adopt rules for the operation and provision of services by the health and human services agencies.

The amendments implement HRC §42.042.

§711.901. *What is an appeal of the investigation?*

(a) An appeal is a challenge of the findings of the investigation, as described in §711.421 of this chapter (relating to What are the possible findings of an investigation?) by a qualified party, as described by §711.905 of this chapter (relating to Who may request an appeal of the investigation?) that results in a review of the investigation.

(b) An appeal may not challenge the determination of whether a confirmation rises to the level of reportable conduct for purposes of the Employee Misconduct Registry.

(c) There are two levels of appeal:

(1) The first level [of] appeal is conducted by the Director of Provider Investigations or his or her [their] designee, or a reviewer designated by the Director of Provider Investigations [Assistant Commissioner of APS].

(2) If a qualified party disagrees with the decision of the first appeal, the qualified party may further appeal. This second level appeal is conducted by a reviewer designated by the Director of Provider Investigations [Assistant Commissioner of APS].

(d) The determination resulting from the second appeal is final and cannot be appealed by any qualified party except Disability Rights Texas or as described in §711.913 (relating to What if the administrator of a state-operated facility disagrees with the second level appeal decision?).

§711.903. *How is an appeal affected by a determination that the perpetrator's confirmed act of abuse, neglect, or exploitation may rise to the level of reportable conduct?*

(a) An appeal that is described in this subchapter is not affected by a determination that the confirmed act(s) of abuse, neglect, or exploitation may rise to the level of reportable conduct.

(b) The designated perpetrator will not receive notice about his or her [their] right to request an EMR hearing until:

(1) the timeframe for all appeals described in this subchapter have expired;[;] or

(2) until the second appeal is completed and a confirmed finding that rises to the level of reportable conduct is upheld.

§711.905. *Who may request an appeal of the investigation?*

(a) In order to be a qualified party to request an appeal, you must be:

(1) the administrator of the service provider or their attorney;

(2) the CDS employer or their legal representative;

(3) the reporter;

(4) the victim or alleged victim, or the legal guardian or parent (if the victim or alleged victim is a child); or

(5) Disability Rights Texas, only if Disability Rights Texas represents the victim or alleged victim or is authorized by law to represent the victim or alleged victim.

(b) An alleged or designated perpetrator may not request an appeal even if they are otherwise a qualified party. An alleged or designated perpetrator may not coerce a provider [CDS employer] into requesting an appeal on the alleged perpetrator's [their] behalf.

§711.907. *How does a qualified party request an appeal?*

(a) To request an appeal, the qualified party must:

(1) complete the required form; [either the DFPS' "Request for Appeal of an APS Provider Investigation" form or "Appeal Addendum," as appropriate to the level of appeal;] and

(2) send the completed form either via email to the email address or via mail to the mailing address designated on the form. [APS_Provider_Appeals@dfps.state.tx.us or via mail to APS Provider Appeals, Adult Protective Services Division, Department of Family and Protective Services, P.O. Box 149030, E-561, Austin, Texas, 78714-9030.]

(b) The victim, alleged victim, legal guardian, parent (if the victim or alleged victim is a child), and reporter may request an appeal by calling the designated phone number [DFPS toll-free at 1-888-778-4766].

§711.909. *What is the timeline for requesting an appeal?*

(a) To request a first level appeal:

(1) Service providers may request an appeal no later than the 30th calendar day following the date the investigative report was signed and dated by the investigator; and

(2) Reporters, alleged victims, [and] legal guardians, and Disability Rights Texas may request an appeal no later than the 60th calendar day following the date the investigative report was signed and dated by the investigator.[;]

[(3) Disability Rights Texas may request an appeal no later than the 60th calendar day following the date the investigative report was signed and dated by the investigator; and]

[(4) DFPS may accept a request for appeal after the deadline for good cause as determined by DFPS.]

(b) A [To challenge the decision from the first level appeal; a] qualified party has 30 calendar days following the date the first level appeal decision letter is signed to request a second level appeal.

(c) APS Provider Investigations may accept a request for appeal after the deadline for good cause as determined by APS Provider Investigations.

§711.911. *How and when is the appeal conducted?*

(a) A first level appeal is conducted by the Director of Provider Investigations or his or her [their] designee, or a reviewer designated by the Director of Provider Investigations [Assistant Commissioner of APS], who:

(1) analyzes the investigative report and the methodology used to conduct the investigation and makes a decision to sustain, alter, or reverse the original finding;

(2) completes the review within 14 calendar days after receipt of the complete appeal request; and

(3) notifies the appeal requestor of the appeal decision; and

(4) as appropriate, notifies the service provider, victim, and/or reporter if the finding changed.

(b) A second level [secondary] appeal is conducted by a reviewer designated by the Director of Provider Investigations [Assistant Commissioner of APS], who:

(1) analyzes the investigative report and makes a decision to sustain, alter, or reverse the original finding;

(2) completes the review within 14 calendar days after receipt of the request; and

(3) notifies the appeal requestor of the appeal decision; and

(4) as appropriate, notifies the service provider, victim, and/or reporter if the finding changed.

§711.913. *What if the administrator of a state-operated facility disagrees with the second level [secondary] appeal decision?*

If the administrator of a state-operated facility disagrees with the second level [secondary] appeal decision, as referenced in §711.911(b) of this chapter (relating to How and when is the appeal conducted?), then the administrator [they] may contest the decision in accordance with 25 TAC §417.510(g)(2) (relating to Completion of the Investigation) and 40 TAC §3.305(b) (relating to Completion of an Investigation).

§711.915. *Is a finding ever changed without an appeal?*

Provider Investigations [DFPS], in its sole discretion, may designate a person to conduct a review of the investigation records or reopen an investigation to collect additional evidence. If a review of the records and any additional investigation [investigating] results in a change of

the finding, the reviewer or his or her designee [DFPS] will notify the appropriate parties in writing.

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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Karen Ray

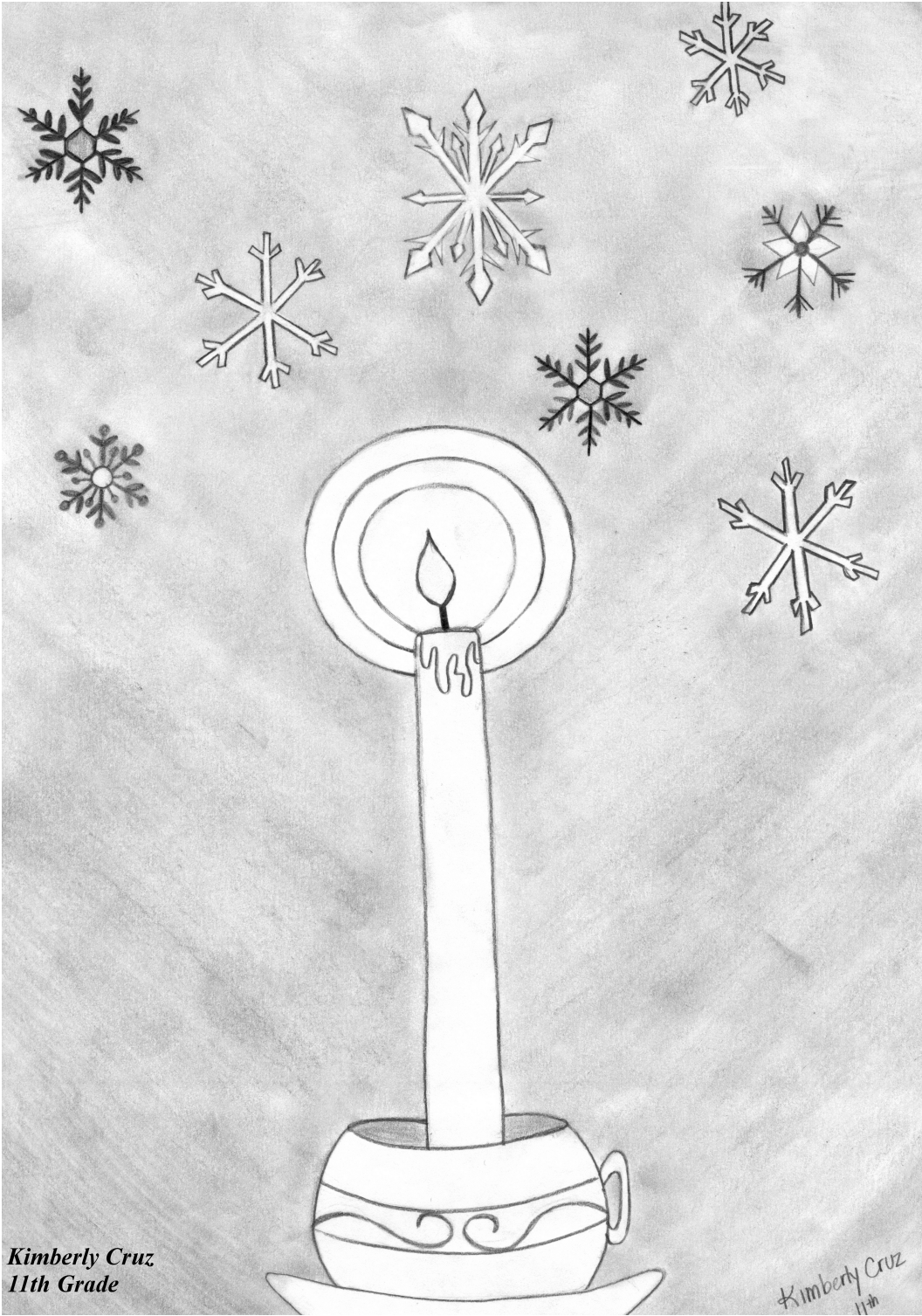
Chief Counsel

Department of Family and Protective Services

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For further information, please call: (512) 339-5920

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Kimberly Cruz
11th Grade

Kimberly Cruz
11th

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 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 80. MANUFACTURED HOUSING

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 Texas Administrative Code, Chapter 80, §§80.2, 80.3, 80.32, 80.33, 80.36, 80.38, 80.40, 80.41, 80.73, 80.80, 80.90 and 80.91, relating to the regulation of the manufactured housing program without changes to the proposed text as published in the October 6, 2017, issue of the *Texas Register* (42 TexReg 5297) and will not be republished.

The rules are revised to comply with House Bill 2019 (85th Legislature, 2017 Regular Session) that amends the Manufactured Housing Standards Act and for clarification purposes.

The rules as proposed on October 6, 2017, are adopted as final rules and are effective thirty (30) days following the date of publication with the *Texas Register* of notice that the rules are adopted.

There were no comments received suggesting changes to the proposed rules during the comment period and no requests were received for a public hearing to take comments on the rules.

The Texas Manufactured Housing Association submitted a response in support of the proposed rules.

The following is a restatement of the rules' factual basis:

Section 80.2(2): Clarification of the definition of business days.

Section 80.3(c): The term of lease-purchase is removed and the name of the Statement of Ownership and Location is changed to the Statement of Ownership.

Section 80.3(g): The reference to the home previously being designated for business use is removed and the name of the Statement of Ownership and Location is changed to the Statement of Ownership.

Section 80.3(h)(3): The name of the Statement of Ownership and Location is changed to the Statement of Ownership.

Section 80.3(k), (1) and (2): The name of the Statement of Ownership and Location is changed to the Statement of Ownership.

Section 80.32(b), (c), (h) and (u): Removed the reference to lease-purchase.

Section 80.32(d) and (g): The name of the Statement of Ownership and Location is changed to the Statement of Ownership.

Section 80.32(p): The name of the Texas Manufactured Homeowners' Recovery Trust Fund changed to the Texas

Manufactured Homeowner Consumer Claims Program (Claims Program).

Section 80.33(g): Additional responsibilities are added for contracting installers subcontracting the installation and included the requirement for provisional installers to submit a copy of the Notice of Installation to the Department's Field Office within three days of installation.

Section 80.33(h): The name of the Statement of Ownership and Location is changed to the Statement of Ownership.

Section 80.36(a): The name of the Statement of Ownership and Location is changed to the Statement of Ownership.

Section 80.38(b): Removed the requirement that the Governor of Texas must declare existence of an emergency, which allows the consumer the right to waive their three day right of rescission in case of an emergency, rather than only after a governor declared natural disaster.

Section 80.40(a): Made a correction in the last sentence by deleting the word "of."

Section 80.41(c)(4) - (8): Includes additional requirements for the licensing education course for related persons added to licenses.

Section 80.41(d)(1): Removed all the Continuing Education specific hour requirements.

Section 80.41(d)(2): Added requirement that all related persons added to a license must complete the eight hours of continuing education every two years.

Section 80.41(e)(4)(A): Removed language requiring fingerprints to be obtained prior to applying for a license.

Section 80.41(f)(1)(C): The name of the Trust Fund changed to the Manufactured Homeowner Consumer Claims Program.

Section 80.73(i): The new subsection allows a purchaser of a manufactured home for business use to file a complaint against the retailer if the home is not habitable, if they disclosed to the retailer in writing at the time of purchase the intent for a person to be present for regularly scheduled work of not less than eight hours.

The title of Subchapter F is changed from Manufactures Homeowners' Recovery Trust Fund to Manufactured Homeowner Consumer Claims Program.

The title of §80.80 is changed from Administration of Claims under the Manufactured Homeowners' Recovery Trust Fund to Manufactured Homeowner Consumer Claims Program.

Section 80.80(a), (b) and (f): Revised the name from Manufactured Homeowners' Recovery Trust Fund or the Fund to ei-

ther Manufactured Homeowner Consumer Claims Program or the Claims Program.

The title of Subchapter G is changed from Statements of Ownership and Location to Statements of Ownership.

The title of §80.90 is changed from Issuance of Statements of Ownership and Location to Issuance of Statements of Ownership.

Section 80.90(a), (b) and (c): Changed the application name from application for statement of ownership and location to application for statement of ownership.

Section 80.90(d): Removes the requirement for certified copies of supporting documentation to accept just copies.

Section 80.90(e): Updates the name of Statement of Ownership and Location by removing "and Location" and includes the term Certificates of Attachment as automatically converting to the new document of title, the Statement of Ownership.

Section 80.90(f), (g), (h) and (i): Updates the name of the Statement of Ownership and the application by removing "and location."

Section 80.90(j): Adds new subsection stating the executive director may require an affidavit of fact requesting additional documentation to accompany a statement of ownership application.

Section 80.91(a): Changes SOL to Statement of Ownership.

SUBCHAPTER A. CODES, STANDARDS, TERMS, FEES, AND ADMINISTRATION

10 TAC §80.2, §80.3

The amended rules are adopted under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by adoption of the amended rules.

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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Joe A. Garcia

Executive Director

Texas Department of Housing and Community Affairs

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SUBCHAPTER C. LICENSEES' RESPONSIBILITIES AND REQUIREMENTS

10 TAC §§80.32, 80.33, 80.36, 80.38

The amended rules are adopted under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by adoption of the amended rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. LICENSING

10 TAC §80.40, §80.41

The amended rules are adopted under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by adoption of the amended rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. ENFORCEMENT

10 TAC §80.73

The amended rule is adopted under §1201.052 of the Texas Occupations Code, which provides the Director with authority to

amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by adoption of the amended rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. MANUFACTURED HOMEOWNER CONSUMER CLAIMS PROGRAM

10 TAC §80.80

The amended rules are adopted under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by adoption of the amended rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. STATEMENTS OF OWNERSHIP

10 TAC §80.90, §80.91

The amended rules are adopted under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by adoption of the amended rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §157.7

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §157.7, Denial of a License; Adverse Action Against a License Holder, without changes to the proposed text as published in the September 1, 2017, issue of the *Texas Register* (42 TexReg 4441). The amendments align this section with statutory changes adopted by the 85th Legislature.

No comments were received on the amendments as published.

The reasoned justification for the amendments is to provide clarity for license holders and to align the rule with statutory changes adopted by the 85th Legislature.

The amendments are adopted under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules relating to certificates and licenses, §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the Appraiser Qualifications Board, and §1104.051, which authorizes TALCB to adopt rules necessary to administer Chapter 1104, Texas Occupations Code.

The statutes affected by these amendments are Chapters 1103 and 1104, Texas Occupations Code. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kristen Worman

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For further information, please call: (512) 936-3652



SUBCHAPTER B. CONTESTED CASE HEARINGS

22 TAC §157.9

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §157.9, Notice of Hearing, without changes to the proposed text as published in the September 1, 2017, issue of the *Texas Register* (42 TexReg 4442). The amendments align this section with statutory changes adopted by the 85th Legislature.

No comments were received on the amendments as published.

The reasoned justification for the amendments is to provide clarity for license holders and to align the rule with statutory changes adopted by the 85th Legislature.

The amendments are adopted under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules relating to certificates and licenses and §1104.051, which authorizes TALCB to adopt rules necessary to administer Chapter 1104, Texas Occupations Code.

The statutes affected by these amendments are Chapters 1103 and 1104, Texas Occupations Code. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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22 TAC §157.12

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §157.12, Failure to Attend Hearing; Default, without changes to the proposed text as published in the September 1, 2017, issue of the *Texas Register*

(42 TexReg 4443). The amendments align this section with statutory changes adopted by the 85th Legislature.

No comments were received on the amendments as published.

The reasoned justification for the amendments is to provide clarity for license holders and to align the rule with statutory changes adopted by the 85th Legislature.

The amendments are adopted under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules relating to certificates and licenses and §1104.051, which authorizes TALCB to adopt rules necessary to administer Chapter 1104, Texas Occupations Code.

The statutes affected by these amendments are Chapters 1103 and 1104, Texas Occupations Code. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. POST HEARING

22 TAC §157.15

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §157.15, Decision, without changes to the proposed text as published in the September 1, 2017, issue of the *Texas Register* (42 TexReg 4443). The amendments align this section with statutory changes adopted by the 85th Legislature.

No comments were received on the amendments as published.

The reasoned justification for the amendments is to provide clarity for license holders and to align the rule with statutory changes adopted by the 85th Legislature.

The amendments are adopted under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules relating to certificates and licenses and §1104.051, which authorizes TALCB to adopt rules necessary to administer Chapter 1104, Texas Occupations Code.

The statutes affected by these amendments are Chapters 1103 and 1104, Texas Occupations Code. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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22 TAC §157.17

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §157.17, Final Decisions and Orders, without changes to the proposed text as published in the September 1, 2017, issue of the *Texas Register* (42 TexReg 4444). The amendments align this section with statutory changes adopted by the 85th Legislature.

No comments were received on the amendments as published.

The reasoned justification for the amendments is to provide clarity for license holders and to align the rule with statutory changes adopted by the 85th Legislature.

The amendments are adopted under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules relating to certificates and licenses and §1104.051, which authorizes TALCB to adopt rules necessary to administer Chapter 1104, Texas Occupations Code.

The statutes affected by these amendments are Chapters 1103 and 1104, Texas Occupations Code. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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General Counsel
Texas Appraiser Licensing and Certification Board
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CHAPTER 159. RULES RELATING TO THE PROVISIONS OF THE TEXAS APPRAISAL MANAGEMENT COMPANY REGISTRATION AND REGULATION ACT

22 TAC §159.1

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §159.1, Definitions, without changes to the proposed text as published in the September 1, 2017, issue of the *Texas Register* (42 TexReg 4445). The amendments align this section with statutory changes adopted by the 85th Legislature.

No comments were received on the amendments as published.

The reasoned justification for the amendments is to provide clarity for license holders and to align the rule with statutory changes adopted by the 85th Legislature.

The amendments are adopted under Texas Occupations Code §1104.051, which authorizes TALCB to adopt rules to necessary to administer Chapter 1104, Texas Occupations Code.

The statute affected by these amendments is Chapter 1104, Texas Occupations Code. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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22 TAC §159.4

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §159.4, Appraisal Management Company Advisory Committee, without changes to the proposed text as published in the September 1, 2017, issue of the *Texas Register* (42 TexReg 4445). The amendments correct the caption of this section to eliminate confusion with another section in this chapter that has the same caption.

No comments were received on the amendments as published.

The reasoned justification for the amendments is to provide clarity for license holders.

The amendments are adopted under Texas Occupations Code §1104.051, which authorizes TALCB to adopt rules to necessary to administer Chapter 1104, Texas Occupations Code.

The statute affected by these amendments is Chapter 1104, Texas Occupations Code. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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22 TAC §159.52

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §159.52, Fees, without changes to the proposed text as published in the September 1, 2017, issue of the *Texas Register* (42 TexReg 4446). The amendments align this section with statutory changes adopted by the 85th Legislature.

No comments were received on the amendments as published.

The reasoned justification for the amendments is to align the rule with statutory changes adopted by the 85th Legislature.

The amendments are adopted under Texas Occupations Code §1104.051, which authorizes TALCB to adopt rules to necessary to administer Chapter 1104, Texas Occupations Code.

The statute affected by these amendments is Chapter 1104, Texas Occupations Code. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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22 TAC §159.102

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §159.102, Eligibility for Registration; Ownership, without changes to the proposed text as published in the September 1, 2017, issue of the *Texas Register* (42 TexReg 4447). The amendments align this section with statutory changes adopted by the 85th Legislature.

No comments were received on the amendments as published.

The reasoned justification for the amendments is to provide clarity for license holders and to align the rule with statutory changes adopted by the 85th Legislature.

The amendments are adopted under Texas Occupations Code §1104.051, which authorizes TALCB to adopt rules to necessary to administer Chapter 1104, Texas Occupations Code.

The statute affected by these amendments is Chapter 1104, Texas Occupations Code. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 20, 2017.

TRD-201704739

Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

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Proposal publication date: September 1, 2017

For further information, please call: (512) 936-3652



22 TAC §159.104

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §159.104, Primary Contact; Appraiser Contact; Contact Information, without changes to the proposed text as published in the September 1, 2017, issue of the *Texas Register* (42 TexReg 4447). The amendments align this section with statutory changes adopted by the 85th Legislature.

One comment was received on the amendments as published from a trade association. This commenter expressed concern that 10 days was too short of a time period to notify TALCB about changes to the Primary Contact or Appraiser Contact because it would not allow sufficient time for an Appraisal Management Company (AMC) to vet replacement candidates for persons assuming the responsibilities of these positions for the AMC. TALCB disagrees with the commenter and notes that the purpose of this section is to provide TALCB with a point of contact to answer questions that may arise. TALCB further notes an AMC has the option of notifying TALCB of interim personnel changes in these positions within 10 days and, after taking additional time to vet replacement candidates, notifying TALCB of a permanent replacement for either position upon selection and confirmation by the AMC.

The reasoned justification for the amendments is to provide clarity for license holders and to align the rule with statutory changes adopted by the 85th Legislature.

The amendments are adopted under Texas Occupations Code §1104.051, which authorizes TALCB to adopt rules to necessary to administer Chapter 1104, Texas Occupations Code.

The statute affected by these amendments is Chapter 1104, Texas Occupations Code. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kristen Worman

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Texas Appraiser Licensing and Certification Board

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For further information, please call: (512) 936-3652



22 TAC §159.105

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §159.105, Denial of Registration, without changes to the proposed text as published in the

September 1, 2017, issue of the *Texas Register* (42 TexReg 4448). The amendments align this section with statutory changes adopted by the 85th Legislature.

No comments were received on the amendments as published.

The reasoned justification for the amendments is to provide clarity for license holders and to align the rule with statutory changes adopted by the 85th Legislature.

The amendments are adopted under Texas Occupations Code §1104.051, which authorizes TALCB to adopt rules to necessary to administer Chapter 1104, Texas Occupations Code.

The statute affected by these amendments is Chapter 1104, Texas Occupations Code. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

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For further information, please call: (512) 936-3652



22 TAC §159.154

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §159.154, Competency of Appraisers, without changes to the proposed text as published in the September 1, 2017, issue of the *Texas Register* (42 TexReg 4449). The amendments align this section with statutory changes adopted by the 85th Legislature.

One comment was received on the amendments as published from a trade association who supports the proposed changes.

The reasoned justification for the amendments is to provide clarity for license holders and to align the rule with statutory changes adopted by the 85th Legislature.

The amendments are adopted under Texas Occupations Code §1104.051, which authorizes TALCB to adopt rules necessary to administer Chapter 1104, Texas Occupations Code.

The statute affected by these adoptions is Chapter 1104, Texas Occupations Code. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 20, 2017.

TRD-201704742

Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

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Proposal publication date: September 1, 2017

For further information, please call: (512) 936-3652



22 TAC §159.155

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §159.155, Periodic Review of Appraisals, without changes to the proposed text as published in the September 1, 2017, issue of the *Texas Register* (42 TexReg 4450). The amendments align this section with statutory changes adopted by the 85th Legislature.

Three comments were received on the amendments as published, one from a trade association who supported the proposed changes. Two commenters pointed out that the changes would allow appraisers to conduct appraisal reviews for an Appraisal Management Company (AMC) if the appraiser is not licensed in Texas. While this is correct, TALCB notes that the Uniform Standards of Professional Appraisal Practice (USPAP), which must be followed when conducting these appraisal reviews require all appraisers to be geographically competent to conduct the appraisal reviews at issue, and the requirement to be geographically competent may result in an AMC's use of appraisers who are licensed in Texas to conduct these appraisal reviews. TALCB further notes that the amendments are consistent with the statutory changes adopted by the 85th Legislature.

The reasoned justification for the amendments is to provide clarity for license holders and to align the rule with statutory changes adopted by the 85th Legislature.

The amendments are adopted under Texas Occupations Code §1104.051, which authorizes TALCB to adopt rules to necessary to administer Chapter 1104, Texas Occupations Code.

The statute affected by these amendments is Chapter 1104, Texas Occupations Code. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

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For further information, please call: (512) 936-3652



22 TAC §159.156

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §159.156, Business Records, without changes to the proposed text as published in the September 1, 2017, issue of the *Texas Register* (42 TexReg

4451). The amendments align this section with statutory changes adopted by the 85th Legislature.

No comments were received on the amendments as published.

The reasoned justification for the amendments is to provide clarity for license holders and to align the rule with statutory changes adopted by the 85th Legislature.

The amendments are adopted under Texas Occupations Code §1104.051, which authorizes TALCB to adopt rules to necessary to administer Chapter 1104, Texas Occupations Code.

The statute affected by these amendments is Chapter 1104, Texas Occupations Code. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

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For further information, please call: (512) 936-3652



22 TAC §159.201

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §159.201, Guidelines for Revocation, Suspension, or Denial of a License, without changes to the proposed text as published in the September 1, 2017, issue of the *Texas Register* (42 TexReg 4451). The amendments align this section with statutory changes adopted by the 85th Legislature.

No comments were received on the amendments as published.

The reasoned justification for the amendments is to provide clarity for license holders and to align the rule with statutory changes adopted by the 85th Legislature.

The amendments are adopted under Texas Occupations Code §1104.051, which authorizes TALCB to adopt rules to necessary to administer Chapter 1104, Texas Occupations Code.

The statute affected by these amendments is Chapter 1104, Texas Occupations Code. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 20, 2017.

TRD-201704745

Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

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Proposal publication date: September 1, 2017

For further information, please call: (512) 936-3652



22 TAC §159.205

The Texas Appraiser Licensing and Certification Board (TALCB) adopts new 22 TAC §159.205, Identity Theft, without changes to the proposed text as published in the September 1, 2017, issue of the *Texas Register* (42 TexReg 4452). This new section implements statutory changes adopted by the 85th Legislature.

One comment was received on the new section as published from a trade association, but the commenter withdrew its comment after a conversation with TALCB Staff resolved the commenter's concern about the proposed changes.

The reasoned justification for this new section is to provide clarity for license holders and to align the rule with statutory changes adopted by the 85th Legislature.

This new section is adopted under Texas Occupations Code §1104.051, which authorizes TALCB to adopt rules necessary to administer Chapter 1104, Texas Occupations Code.

The statute affected by this new section is Chapter 1104, Texas Occupations Code. No other statute, code or article is 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 November 20, 2017.

TRD-201704746

Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

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Proposal publication date: September 1, 2017

For further information, please call: (512) 936-3652



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), adopts amendments to §§37.142 - 37.145, concerning the Spinal Screening Program (program),

without changes to the proposed text that was published in the September 8, 2017, issue of the *Texas Register* (42 TexReg 4562). The sections will not be republished.

BACKGROUND AND JUSTIFICATION

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 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.

COMMENTS

The 30-day comment period ended October 8, 2017.

During this period, DSHS did not receive any comments regarding the proposed rules.

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 DSHS and for the administration of Health and Safety Code, Chapter 1001.

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 November 21, 2017.

TRD-201704779

Barbara L. Klein

Interim General Counsel

Department of State Health Services

Effective date: January 1, 2018

Proposal publication date: September 8, 2017

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



CHAPTER 140. HEALTH PROFESSIONS REGULATION

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts the repeal of §§140.1 - 140.24, Title 25, Subchapter A, concerning Perfusionists; §§140.201, 140.202, and 140.204 - 140.218, Title 25, Subchapter E, concerning Respiratory Care; and §§140.501, 140.502, and 140.504 - 140.524, Title 25, Subchapter J, concerning Medical

Radiologic Technologists. The repeals are adopted without changes to the proposed text as published in the July 21, 2017, issue of the *Texas Register* (42 TexReg 3611).

BACKGROUND AND JUSTIFICATION

The Texas Legislature enacted Senate Bill (SB) 202, 84th Legislature, Regular Session (2015), which included amendments, effective September 1, 2015, to Occupations Code, Chapters 601 (relating to Medical Radiologic Technologists), 603 (relating to Perfusionists), and 604 (relating to Respiratory Care Practitioners). These amendments transferred regulatory responsibility under those occupational licensing statutes from the Department of State Health Services (DSHS) to the Texas Medical Board (TMB) and, in the case of Chapters 601 and 604, to the TMB, together with the Texas Board of Medical Radiologic Technology and the Texas Board of Respiratory Care, respectively. The latter Boards are advisory Boards to the TMB under their respective chapters (hereafter referred to collectively as TMB's "Advisory Boards").

Pursuant to SB 202's transition provisions for the 2015-2017 biennium, DSHS rules for the programs were to remain in effect until changed by TMB, the Texas Board of Medical Radiologic Technology, or the Texas Board of Respiratory Care, as appropriate, pursuant to the amended rulemaking authority under SB 202 for rules governing the transferring programs. The transition of the programs has now been completed and TMB, or its Advisory Boards, with the approval of TMB, as applicable, have adopted new rules for each of the transferred programs to supersede the rules that had governed them during the period of DSHS's regulatory jurisdiction. Those rules are now in effect and located with other TMB rules in Title 22, TAC, Part 9, as follows:

-Perfusionists - Chapter 188.

-Respiratory Care Practitioners - Chapter 186.

-Medical Radiologic Technology - Chapter 194.

The rules in Title 25, TAC, relating to these programs, which governed during the period of DSHS's regulatory jurisdiction, are now obsolete, having been superseded pursuant to SB 202, Section 2.199, and the new rules of TMB and its Advisory Boards. The Executive Commissioner now repeals these obsolete rules from Title 25, TAC, pursuant to the Executive Commissioner's general rulemaking authority for the Health and Human Services System.

COMMENTS

The 30-day comment period ended on August 21, 2017.

During the comment period, no comments were received regarding the proposed rule repeals.

SUBCHAPTER A. PERFUSIONISTS

25 TAC §§140.1 - 140.24

STATUTORY AUTHORITY

The repeals are authorized under Government Code, §531.0055(e), which gives the Executive Commissioner of the HHSC the authority to adopt rules for the health and human services system. This includes repealing rules that are obsolete and no longer necessary.

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 November 21, 2017.

TRD-201704776

Karen Ray

Chief Counsel

Department of State Health Services

Effective date: December 11, 2017

Proposal publication date: July 21, 2017

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



SUBCHAPTER E. RESPIRATORY CARE

25 TAC §§140.201, 140.202, 140.204 - 140.218

The repeals are authorized under Government Code, §531.0055(e), which gives the Executive Commissioner of the HHSC the authority to adopt rules for the health and human services system. This includes repealing rules that are obsolete and no longer necessary.

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 November 21, 2017.

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Karen Ray

Chief Counsel

Department of State Health Services

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Proposal publication date: July 21, 2017

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



SUBCHAPTER J. MEDICAL RADIOLOGIC TECHNOLOGISTS

25 TAC §§140.501, 140.502, 140.504 - 140.524

The repeals are authorized under Government Code, §531.0055(e), which gives the Executive Commissioner of the HHSC the authority to adopt rules for the health and human services system. This includes repealing rules that are obsolete and no longer necessary.

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 November 21, 2017.

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Karen Ray

Chief Counsel

Department of State Health Services

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

TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 53. CERTIFICATION BY COMPANIES OFFERING QUALIFIED INVESTMENT PRODUCTS

34 TAC §§53.1, 53.3 - 53.17

The Teacher Retirement System of Texas (TRS) adopts amended and new rules to Chapter 53, §§53.1 and 53.3 - 53.17, relating to certification by companies offering qualified investment products to employees of school districts or open-enrollment charter schools through what are commonly referred to as "403(b) plans," with changes to the text of §§53.1; 53.3 - 53.7; 53.10; and §53.15 as published in the September 22, 2017, issue of the *Texas Register* (42 TexReg 4970).

The proposed new and amended rules update the application requirements, certification and registration processes, and maximum allowable fees that companies may charge for the sale of 403(b) annuity and non-annuity products to public education employees. As part of the current comprehensive four-year rule review of Chapter 53 in Title 34, Part 3, of the Texas Administrative Code (TAC), TRS has determined that the amended and new rules are necessary to continue the effective implementation of the article, as required by law. TRS adopts the new and amended rules at the same time it repeals existing rules §§53.6-53.9 and §§53.11-53.20.

TRS amends the following sections of its 403(b) rules: §53.1, relating to definitions; §53.3, relating to maximum fees, costs, and penalties; §53.4, relating to qualifications for certification by companies offering qualified investment products that are annuity contracts; and §53.5, relating to qualifications for certification by companies offering qualified investment products other than annuity contracts. TRS adopts the following new rules: §53.6, relating to application and fee for certification; §53.7, relating to listing of certified companies; §53.8, relating to product and investment option registration requirements; §53.9, relating to application and fee for approval to register products and investment options; §53.10, relating to registration and listing of products and investment options; §53.11, relating to ongoing company responsibilities regarding certification and TRS registered products and investment options; §53.12, relating to TRS actions regarding certification and TRS registered products and investment options; §53.13, relating to coordination with regulatory and enforcement agencies; §53.14, relating to suspension or revocation of certification; §53.15, relating to notice to potential purchaser of annuity contracts; §53.16, relating to electronic signature; and §53.17, relating to administrative service providers. TRS adopts the new rules at the same time TRS repeals existing rules §§53.6-53.9 and §§53.11-53.20.

Amended §53.1 amends the definitions of the words "certified company," "certify," "company," "contract," "eligible qualified investment product," "platform company," "product," "qualified investment product," "register," "representative," and "specialized department" and adds a definition for the terms "approval to register products," "closed," "investment option," "product registration system," "proprietary company," "TRS registered product,"

and "restricted" to clarify the meaning of other rules containing those terms.

Amended §53.3 modifies the maximum fees, costs, and penalties a certified company may charge for annuity or non-annuity products and investment options that are registered on or after October 1, 2019 and sold through salary reduction agreement on or after November 16, 2019. It provides that products or investment options that are registered before October 1, 2019 and sold through salary reduction agreement before November 16, 2019 are restricted as of November 16, 2019 and employees who have purchased those products may continue, change or resume contributions under an existing salary reduction agreement or execute an updated or amended salary reduction agreement with the same or a new employer. The amended fees, costs, and penalties taking effect for products registered on or after October 1, 2019 and sold on or after November 16, 2019, prohibit registration of a product with a front or back-end sales load, adjust the allowable asset-based fee by asset class and sets maximum allowable fees for annuity products and non-annuity products, lower the allowable loan initiation fee, and increase the maximum allowable account maintenance fee.

Amended §53.4 clarifies that a company offering annuity products can certify to TRS as a proprietary company, if the company meets the certification requirements. Also, removes a restatement of the statute.

Amended §53.5 clarifies that a company offering non-annuity products can certify to TRS as a proprietary company or a platform company, if the company meets the certification requirements.

New §53.6, titled, "Application and Fee for Certification," clarifies the application requirements for companies providing both annuity and non-annuity products and sets out new application requirements regarding customer service disclosures for companies providing non-annuity products and investment options. The rule provisions provide that certification of a non-annuity company is not conditioned on the provision of the customer services disclosed in the application. Additionally, the rules set the five-year company certification fee at \$5,000.

New §53.7, titled, "Listing of Certified Companies," clarifies TRS's process of listing newly certified companies on the TRS web site.

New §53.8, titled, "Product and Investment Option Registration Requirements," clarifies the registration requirements for products and clarifies that certified companies may register investment options in addition to products.

New §53.9, titled, "Application and Fee for Approval to Register Products and Investment Options," clarifies the process to apply to register products and investment options, and sets the product registration fee at \$10,000 per five-year product registration period.

New §53.10, titled, "Registration and Listing of Products and Investment Options," clarifies TRS's process for listing newly registered products and investment options.

New §53.11, titled, "Ongoing Company Responsibilities Regarding Certification and TRS Registered Products and Investment Options," provides the ongoing responsibilities of companies to maintain company certification and product and investment option registration.

New §53.12, titled, "TRS Actions Regarding Certification and TRS Registered Products and Investment Options," provides the actions TRS may take regarding certified companies and registered products and investment options.

New §53.13, titled, "Coordination with Regulatory and Enforcement Agencies," provides the process that TRS must follow when it receives complaints regarding products and investment options.

New §53.14, titled, "Suspension or Revocation of Certification," clarifies the process regarding suspension and revocation of company certification or registration of products or investment options.

New §53.15, titled, "Notice to Potential Purchaser of Annuity Contracts," adopts the rule provisions found in current rule §53.9 regarding notices to potential purchasers of annuity contracts.

New §53.16, titled, "Electronic Signature," provides that TRS may develop a policy to accept electronic filings and electronic signatures of applications for company certification and registration of products and investment options.

New §53.17, titled, "Administrative Service Providers," adopts the rule provisions found in current rule §53.20 regarding administrative service providers.

TRS took over a year to develop the final rules after commencing the rule review. As part of this process, TRS issued a general questionnaire to stakeholders regarding potential rule improvements, held two informal conferences to take stakeholder input, considered stakeholder letters and comments, and met individually with stakeholders upon request to receive feedback. TRS also gathered data from stakeholders on the potential impact of the rule amendments through two different industry surveys and received advice and input on the rules from Aon Hewitt, an independent consulting firm with expertise in institutional 403(b) administration, products, and fees. The timeline and process for conducting the rule review and adopting the final rules is laid out below.

Figure: 34 TAC Chapter 53--Preamble

Based on stakeholder comments, TRS withdrew the June 16, 2017, and July 21, 2017, rule proposals and published a new version of the proposed new and amended rules on September 22, 2017. Therefore, in the comment summaries and responses below, TRS will only address the comments received during the comment period for the most recent iteration of the proposed rules, which were published for public comment in the *Texas Register* on September 22, 2017. TRS has provided information on stakeholder input and the development of the rules prior to the September 22, 2017, rule version merely as background.

For the September 22, 2017, rule proposal, TRS received five sets of comments from the following business entities and organizations representing business: PlanMember Financial Corporation (PlanMember), National Tax-Deferred Savings Association (NTSA) on behalf of the American Retirement Association and NTSA, Variable Annuity Life Insurance Company (VALIC), AXA Equitable Financial Services, LLC (AXA), and the Texas Association of Life and Health Insurers (TALHI).

Commenters noted that the September 22, 2017, rules represented an improvement over the June 16, 2017, and July 21, 2017, proposed amended and new rules by stating:

The proposed rules continue to be structured in a manner that supports choice in investment products, service models, and investment styles for Texas public school employees.

The updated proposed rule would allow companies to continue to offer annuity products and many of the investment options that are currently used by TRS members.

The updated proposed rules are workable and represent a significant shift from the original proposed rules.

Commenters asked for amendments to the proposed rules. The principal reasons and requested changes fall into one of the nine following categories:

- 1- Concern with the rule review deadline and the process TRS used to develop the new rules.
- 2- The maximum allowable asset-based fee, including capping the maximum allowable asset-based fee by asset class, could reduce the number of 403(b) products and investment options available to employees.
- 3- The prohibition on sales loads will eliminate some high-performing fund options and is inconsistent with the language of Article 6228a-5.
- 4- The reduction in the maximum allowable loan initiation fee could be administratively difficult on some companies and make it financially difficult for companies to offer loans.
- 5- Concern as to how Registered Investment Advisors (RIA) will register their model portfolios under the new asset-based fee asset class breakout.
- 6- Requested amendments to the grandfather provisions and the definition of restricted products.
- 7- Clarification of the suspension and revocation procedures to include removing all references to Chapter 43 of TRS rules in the suspension and revocation process.
- 8- Concerns about the increase in company certification and product registration fees.
- 9- Other general comments and general revisions.

TRS modified the proposed rules in response to some of the requested amendments. To the extent TRS did not modify the proposed rules as requested, TRS overrules the requested amendments for the following reasons indicated.

1- Concern with the rule review deadline and the process TRS used to develop the new rules. Some commenters asserted that TRS has until March 2018 to complete the Chapter 53 rule review and, therefore, TRS does not need to adopt rules by December 2017. Commenters also expressed concern that TRS was not inclusive in developing rules in the early part of the rule review process. TRS disagrees that it has until March 2018 to complete the rule review and that it was not inclusive of stakeholders during any part of this process. On September 22, 2016, the Policy Committee of the TRS Board of Trustees ("Policy Committee") adopted an updated Policy Review Schedule that lays out the review deadlines for all rules and policies of the TRS Board. The Policy Committee does this annually each September in order for the Policy Committee and the Board to plan their work. In that schedule, the Policy Committee adopted a review schedule that set December 18, 2017, as the deadline to complete the rule review. This deadline was based on the date the last rule review notice of completion was filed with the Secretary of State, which was December 18, 2013. The deadline for

the December 2013 rule review was March 10, 2014. However, when TRS completed the review in December 2013, it adjusted the subsequent review deadline to December 2017. As for the process, TRS believes it has conducted an open and transparent rule review process that has sought input and comment from all stakeholders. The review of the 403(b) rules officially began in September 2016 with authorization of the rule review by the TRS Board of Trustees. Two informal conferences were held in December 2016 and June 2017 following publication of the original proposed rules. Additionally, TRS staff made presentations to the TRS Board of Trustees on multiple occasions at each step of the process (February, June, and twice in September 2017). From the time the original proposed rules were published in June 2016 to final adoption in October, stakeholders had four opportunities to testify before the TRS Board of Trustees. This is in addition to the opportunity to provide written comments following publication of rules in the *Texas Register*.

2- The maximum allowable asset-based fee, including capping the maximum allowable asset-based fee by asset class, could reduce the number of 403(b) products and investment options available to employees. Commenters requested that TRS either amend the most recently proposed maximum allowable asset-based fees to not impose the asset fee classes rule on variable annuities or to postpone adopting any final rules until TRS can obtain better information on both the actual costs and the "performance" of various fund groups in order to set maximum fees that do not eliminate legitimate products. Commenters noted that a number of factors other than fees impact the quality of a fund and urged TRS to take those factors into account, including diversity, past and future performance and quality of managers, so that a potentially better performing fund is not eliminated as a choice for Texans. Commenters offered that variable annuity account fees should either remain at 2.75% or not be reduced below 2.70%. They noted that the actual fees imposed by any insurer will vary and are a competitive factor in the market place. Such a maximum would still reflect a reasonable amount for the additional costs and benefits associated with an annuity contract and also considers the fact that variable annuity may have asset fees it must pay for certain assets offered through the variable annuity. Commenters also stated that the total maximum fees by asset class contain assumptions regarding the expense ratios of funds that are incorrect and inapplicable for the TRS 403(b) marketplace. Commenters noted that using the dollar weighted average orients around large institutional investors that may be able to receive institutional pricing with discounted fees. Individual TRS school districts have lower assets under management and would not qualify for this discounted pricing. A minority of investment options will no longer be able to be offered to TRS members due to conversion to asset-class based fee caps. Commenters encouraged TRS in the future to thoroughly examine not just Morningstar data but the data most relevant to TRS, which includes existing investment options within the TRS marketplace, as well as data regarding 403(b) plans more generally. TRS disagrees with the assertion that variable annuity products and investment options are not appropriate for registration by asset class. The investment options underlying the variable annuity products span a wide range of funds so that investors can develop portfolios that serve their financial goals within those annuity products. Some investors may opt for a more conservative money market fund while others prefer funds with a more aggressive risk/reward option. By setting the maximum allowable asset-based fee by asset class, TRS is ensuring that investors choosing a more conservative investment option that is typically less expensive to manage do not pay the same level of expense

ratio as investors selecting a more complex fund, such as a real assets fund. Additionally, TRS believes it would take a legislative change to require companies to report fund performance data to TRS before TRS could take performance into account when developing the maximum allowable asset-based fee. TRS also disagrees that the expense ratios identified by TRS are inappropriate for the Texas 403(b) market. In determining the maximum fee cap for the various asset classes, TRS used annual expense ratio data from Morningstar as of December 31, 2015. Morningstar's expense ratio data includes information on over 12,000 funds, representing over \$9 trillion in assets, broken down by asset class. TRS staff reviewed expense ratio data based on percentiles (25th and 75th), medians, and averages. Since mutual fund expense ratios do not change frequently, TRS believes this study to be a relevant comparison. Ultimately, TRS chose to use the dollar weighted average fees to set the proposed expense ratio caps because this measure represents how investors have allocated capital in the marketplace. TRS found that looking at a wide range of investments regardless of investment type provided a more appropriate measure of expense ratios of funds than limiting analysis to just the 403(b) market. Moreover, combining the expense ratios with the administrative fee into a single maximum allowable asset-based fee lessens the impact of the proposed change because the expense ratio is not a stand-alone cap. Companies can offer products with expense ratios higher than the dollar-weighted Morningstar average provided that the entire asset-based fee (expense ratio and administrative fee) are lower than the total maximum allowable asset-based fee.

3- The prohibition on sales loads will eliminate some high-performing fund options and is inconsistent with the language of Article 6228a-5. Commenters asserted that TRS should not prohibit front and back-end sales loads because a few variable products have some type of either front or back load. Commenters noted that the marketplace, not TRS, should be the regulator of these loads. Moreover, commenters stated that the legislature knew in 2001, when it enacted Article 6228a-5, that front-load and back-load 403(b) mutual funds were one of several products that were offered to Texas public education employees. The legislature did not empower TRS to eliminate all front or back end fees; therefore, TRS is not authorized to do so. Commenters also stated that a low-cost fund that results in low or negative performance may not be better than an actively managed fund that achieves better performance. Commenters noted that individuals who invest in a particular mutual fund for a long time may be better served by selecting a front-end or back-end load option as compared to a no-load fund with poor performance and annual fees. Commenters asserted that funds that have no-loads instead charge annual charges often referred to as 12b-1 fees. Commenters asserted that the need for the brokers to explain and compare potential advantages and disadvantages regarding products is crucial. The elimination of all front-end load funds may eliminate brokers and eliminate those potentially higher performing funds as a choice. Finally, commenters requested clarification that the term "back-end load" (which is not a defined term) does not include a surrender or withdrawal charge. TRS does not agree with the comments regarding a lack of legal authority to prohibit sales loads. The legislature gave TRS the authority to establish maximum fees, costs, and penalties. This necessarily implies the authority to determine that certain fees charged in addition to other allowable fees would result in excessive charges in the aggregate. Moreover, if the legislature had intended the market and, not TRS, to be the sole regulator for these types of fees, then the legislature would have drawn TRS's authority to set maximum fees, costs, and penalties more narrowly. Out of

the current products registered with TRS, the average front-end sales load is 5.07%. The average asset-based fee for those same products is 1.35%. That means an employee purchasing one of these products would pay an average first year fee of 6.42%. By way of comparison, the yield of the current S&P 500 index was 2.39% as of June 30, 2017. This means that an employee annually earning the average return of the S&P 500 would spend all of the first and second year's and over half of the third year's earnings on fees alone. TRS recognizes that variable annuities are complex products with features such as guaranteed income riders that mitigate against the erosive effect of fees. Fundamentally, however, employees purchasing a sales-loaded product must earn more on their investment than employees purchasing a no-load product to reach the same savings goal. Additionally, the comments suggest that for investors the choice is either: 1) pay a sales load with little to no annual asset-based fee; or 2) pay no sales load with a higher annual asset-based fee. However, the data in TRS's product registration system does not support this "either / or" assertion. All of the products in TRS's system with a front-end sales load also have an annual asset-based fee. Out of the products and investment options that charge a back-end sales load, only 0.45% do not have an annual asset-based fee. Therefore, the vast majority of employees who buy products with sales loads are also paying annual asset-based fees. TRS disagrees that the elimination of sales loads may eliminate brokers. TRS has increased the administrative-fee portion of the maximum allowable annual asset-based fee from the 1.25% that was originally built into the rule in 2002 to 1.50% for non-annuity products and 1.75% for variable annuity products. These maximum allowable administrative fees are then combined with the maximum allowable expense ratio for each asset class to establish a maximum annual allowable asset-based fee. TRS recognizes the importance for agents and brokers to market to educational institution employees, including in small or rural school districts, and believes that the maximum annual allowable asset-based fee will allow agents and brokers to be compensated for such sales without sales loads. Additionally, TRS finds that there are sufficient products and investment options available to allow employee choice even with the elimination of sales loads. Finally, TRS does not believe the term "back-end sales load" needs to be defined as separate from a surrender charge. Previously, in the rules, back-end sales loads and surrender charges were not defined, had different maximum allowable amounts, and were communicated and implemented without confusion.

4- The reduction in the maximum allowable loan initiation fee could be administratively difficult on some companies and make it financially difficult for companies to offer loans. Commenters noted that the vast majority of variable annuity products have loan provisions in the policy that typically reflect a fee of \$50. Changing the loan fee could require an insurer to refile and obtain approval for all of those products with the Texas Department of Insurance (TDI) and then be registered again with TRS. Other commenters noted that lowering the maximum allowable loan fee will result in fewer companies offering products that allow for loans. TRS disagrees. In developing the rule, TRS consulted with TDI on their approval of forms process. TDI noted that they have a "file and use" process for annuity products that meet certain requirements. Insurers who use this process do not have to wait for approval before using the forms. There is also an exempt filing process that, depending on the nature of the forms, could be an alternative to the standard filing process. Given the various and expedited options for filing forms at TDI, TRS finds that lowering the maximum allowable loan initiation fee will not

cause an administrative burden for companies. Moreover, TRS believes that lowering the maximum allowable loan initiation fee serves two public policy goals: 1) a potential reduction in the amount of products that offer loans mitigates against the retirement savings leakage that comes from loans; and 2) if an employee is determined to purchase a product or investment option that offers a loan, then lowering the fee reduces the burden of fee, costs, and penalties on the employee.

5- Concern as to how Registered Investment Advisors (RIA) will register their model portfolios under the new asset-based fee asset class breakout. Some commenters requested that TRS allow RIA services to be registered in the "Other" asset class category or create an RIA-specific category. Additionally, they requested that TRS allow RIAs to use the blended average weighted expenses of the portfolio to meet the asset-based fee caps. Finally, RIAs noted the logistical difficulty for platform companies to register products and investment options in the TRS 403(b) Product Registration System (PRS). Commenters requested that the Board instruct Texas TRS staff to work with California 403bcompare.com to update its website, search functions and coverage for all company registrations by product. TRS finds it unnecessary to allow RIA offerings to be registered under the "Other" asset class category, as the responsibility for selecting the appropriate asset class for a registered investment option resides only with the proprietary company offering the investment option. RIAs may only certify with TRS as platform companies. At no point in the registration process would a platform company select an asset class. For example, a proprietary company will continue to register its investment options, including determining the appropriate asset class(es). The platform company will then link to the already-registered investment options. TRS disagrees with the recommendation to create a stand-alone RIA asset class category as each individual mutual fund in an RIA model portfolio should comply with the appropriate fee cap by asset class. TRS does not believe that it is feasible to allow RIAs or any company to stay below the maximum fee caps by using a blended average weighted portfolio expense. TRS understands that typically employees do not purchase just a single fund; rather, they purchase a variety of funds to make up a portfolio. However, TRS is charged with registering individual funds, not portfolios. So, there would be a fundamental mismatch between the statutory structure of the program and the allowable maximum fees, if TRS were to attempt to set the maximum allowable asset-based fee by portfolio. Moreover, if TRS allowed individual investment options to exceed the fee caps based on the premise that the weighted average of the portfolio would not exceed the caps, TRS would have no way to verify that customers will not be overcharged. Therefore, it is reasonable for TRS to meet the statutory charge of registering funds and adopting maximum fees, costs, and penalties by setting fee caps at the fund, not portfolio, level. TRS agrees that in the current PRS, it is difficult for platform companies, such as RIAs, to register proprietary company products. TRS is examining ways to update and improve the PRS for all companies and specifically to improve the process for platform companies to register products. This includes looking at how other states manage their 403(b) program, including 403bcompare.

6- Requested amendments to the grandfather provisions and the definition of restricted products. Commenters requested clarification in the definition of "Restricted" to change "and" between subsections (B) and (C) to "or". Commenters also requested adding language to clarify that an employee may execute a revised or updated salary reduction agreement with the same or

a different employer. Finally, commenters offered that the language in §53.8(d) should be updated to match the options available for restricted products. TRS disagrees that "and" between subsections (B) and (C) should be changed to "or". The options available for restricted products are cumulative not in the alternative. For a restricted product or investment option, an employee could conceivably keep making contributions, increase the amount, and execute a new salary reduction agreement to reflect as such. TRS agrees that employees should be allowed to continue contributing to a restricted product or investment option if they change employers. Therefore, TRS has added clarification that an employee may execute a revised or updated salary reduction agreement with the same or a different employer. TRS disagrees that the language in §53.8(d) should be updated to reflect the same options for restricted products because that provision details the exception built into the rule for unregistered products that were purchased before 2008. The rule provides that employees can continue to contribute to those products in an existing salary reduction agreement but only the amount of the contribution may be changed. To update the language in §53.8(d) to match the restricted products language would be broadening the exception for unregistered products and is not consistent with TRS's legislative authority.

7- Clarification of the suspension and revocation procedures to include removing all references to Chapter 43 of TRS rules in the suspension and revocation process. Commenters stated that referencing the administrative procedures of Chapter 43 of the Texas Administrative Code (TAC) for a suspension or revocation contested case proceeding is inappropriate for 403(b) proceedings. Commenters suggested using the procedures for contested cases in 1 TAC Chapter 155. Commenters noted that Chapter 2001 of the Administrative Procedures Act (APA) requires reasonable notice of a hearing of not less than 10 days and an opportunity to respond and present evidence on each issue involved in the case. Therefore, referencing Chapter 43, which does not have the same notice provisions, is inconsistent with due process. TRS disagrees that the suspension and revocation proceedings are inconsistent with due process because the rule language explicitly provides that a suspension or revocation is a contested case proceeding under Chapter 2001 of the APA. As commenters noted, that necessarily entails reasonable notice and an opportunity for a hearing. Moreover, the reference to Chapter 43 is not a new addition to the rules. The references to the procedures in Chapter 43 have been in the rules for 15 years and have not been used as a vehicle to suspend or revoke without due process. Therefore, TRS is not convinced that it is inappropriate or a violation of due process to reference the procedures in Chapter 43.

8- Concerns about the increase in company certification and product registration fees. Commenters offered that the increased company certification and product registration fees may exceed amounts authorized in law. Commenters note that the fees are being increased significantly with no explanation as to why the costs associated with the program are increasing or will increase. Additionally, commenters requested distinction in the fees between certification and recertification and annuity and non-annuity companies. TRS disagrees that the fee increases exceed TRS's statutory authority or have been left unexplained. Art. 6228a-5 §7 authorizes TRS to collect an administrative fee for certification of companies and registration of products that is not to exceed the administrative cost of the system. The certification fee is capped at \$5,000. However, the registration fee is not capped. The fees charged for participation in the

403(b) program are important because the TRS pension trust fund cannot subsidize the 403(b) program. Prior to 2016, TRS developed an allocation methodology to determine direct and indirect costs associated with the 403(b) program. However, that methodology had not been revisited until recently. A 2016 TRS internal audit report recommended that TRS start tracking the cost of administration for fee-setting purposes to ensure the trust fund is not subsidizing 403(b). Therefore, all TRS staff who work on 403(b) matters—of just employees who are directly allocated to the 403(b) program—updated the amount of time spent on 403(b) matters for fiscal years 2016 and 2017. The increase in time dedicated to 403(b) matters for support functions across TRS was significant. For example, analysis by TRS's budget staff shows that indirect payroll costs (cost for staff providing support services such as legal and information technology services) increased 800%. This is due, partly, to increased complexities in company certification matters. For example, several companies seeking certification in the last year have raised complicated legal questions about which certification requirements they can meet through common ownership or control. Additionally, just in the last year, TRS has had to navigate complex legal questions involving federal banking law and preemption as it relates to certification. Moreover, commenters ignore other indirect costs associated with the program such as the use of space and equipment and the regular cost of information technology personnel to update the certification and registration lists and troubleshoot technical issues. Therefore, the TRS Budget Department continues to work on refining the methodology for tracking the amount of TRS resources spent on 403(b) matters, and TRS will continue to examine the issue. What is clear, however, from the data is that administration of the 403(b) program is more costly than previously assessed under the previous allocation methodology and the lower fee amounts are not sufficient. As it relates specifically to the product registration fee increase, TRS staff have twice publicly presented about the costs associated with the Product Registration System (PRS) rebuild. The goal of the PRS rebuild is to enable the system to capture new asset class data to improve transparency of fee information, improve the company interface to make it easier for companies to register their products and investment options, and update the public interface to ensure the PRS matches the look and feel of the TRS web presence. TRS estimates 6,500 hours to update the PRS utilizing seven different positions to manage and execute on the project. Overall, TRS estimates the project to cost around \$500,000 and under the current product registration fee, TRS would collect less than \$130,000 in fiscal year 2018. Therefore, an increase in the product registration fee is necessary to update the PRS. TRS disagrees that recertification is less costly than certification as the processes are exactly the same, including verifying company eligibility. Additionally, whether a company is entering the program for the first time or renewing its certification, various needs arise during the five-year period that TRS must provide resources to address. For example, the costs associated with the statutorily required annual demonstration process must be borne by the certification fee, as there is not a separate annual demonstration fee for cost recovery. Finally, TRS disagrees that annuity companies and non-annuity companies should be charged separate certification fees. The certification fee is not based on company type because both sets of certification requirements present an administrative hurdle that TRS must work with companies to navigate as they enter and continue to participate in the program.

9- Other general comments and general revisions.

Commenters requested to revise the second sentences of §53.3(a) and (b) to make it clear that this is referring to the same product or investment option fees, costs, and penalties identified in the previous sentence and not, potentially, sweeping in amounts payable for services outside of the product and withdrawn from the account, such as third-party administration fees or account advisory fees. TRS disagrees that this delineation is necessary because §53.3(a), (b), and (e) provide maximums for specifically delineated fees. TRS does not cap, and therefore is silent on, the types of fees identified by commenters such as third-party administration fees or advisory services fees.

Commenters provided that it was unnecessary and administratively inefficient to create a definition for "approval to register." Commenters asserted that companies should be allowed to just file their company certification application and register products without a separate document. TRS disagrees that the "approval to register" is unnecessary. Companies register for a five-year period and when product registration was adopted in 2007 the majority of companies were in the middle of their certification period. To allow those companies to begin registering products as soon as possible, TRS created the product registration process, which necessitates a separate application because it runs on a separate five-year timeline for most companies. If TRS were to do away with this application, which has been in place for 10 years, TRS would have no way to track where a company's five-year period for registering products begins and ends as it often does not line up with the company's five-year certification period.

Commenters requested clarification and uniformity that companies are certified to TRS and not to the "TRS Board of Trustees." TRS agrees and has made this modification.

Commenters offered that it is unclear as to why the definition of company needs to be changed and requested keeping the current definition. Moreover, commenters noted that in some federal privacy regulations they are expressly excluded from the term "financial services entity." TRS disagrees that the definition of "company" is inappropriate or too inexact. While commenters may be not be considered a "financial services entity" for some privacy regulations, those provisions are not controlling in this circumstance. Moreover, it is reasonable for a company offering qualified investment products under, as per the definition, to be characterized as a financial services entity. TRS believes the definition of company needs to be changed to increase clarity in the rules. The definition of company was amended in 2009 to address platform companies. In order to contemplate platform companies, the distinction between platform companies and other types of companies was built into the definition of "company" itself. TRS believes it is better to define company more broadly and then create separate definitions for platform company and proprietary company. The effect is a funnel. "Company" is the broadest term. If a company meets the certification requirements as a proprietary annuity company or proprietary non-annuity company, then the company may certify as such. If a company meets the certification requirements for a platform non-annuity company, then the company may certify as such. Thus, proprietary and platform companies are types of companies that each have their own criteria and definitions. This untangles the definitions of platform company and proprietary company.

Commenters noted that in §53.4, the word "proprietary" is added but the word "company" by itself is used elsewhere in the section. TRS agrees that the inconsistency should be remedied.

TRS has clarified in §53.4 that a company certifies to TRS as a proprietary annuity company if it meets those certification requirements. TRS has clarified in §53.5 that a company certifies to TRS as either a proprietary non-annuity or a platform non-annuity company, if it meets those certification requirements.

Commenters suggested amending §53.15 as proposed to clarify the specific section of Art. 6228a-5 that requires notice. TRS agrees and has amended the section as requested.

Statutory Authority: The amended and new rules are adopted under the following statutes: §6(a) of Article 6228a-5, Vernon's Texas Civil Statutes, which authorizes TRS, after consultation with the Texas Department of Insurance, the Texas Department of Banking, and the State Securities Board, to adopt rules to administer §§5, 6, 7, 8, 8A, 9A, 9B, 11, 12, and 13 of Article 6228a-5 relating to 403(b) company certification and product registration; and §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system.

§53.1. Definitions.

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

(1) **Annuity or annuity contract**--A qualified investment product that meets the requirements for a fixed or variable annuity contract under applicable insurance laws and rules.

(2) **Approval to register products and investment options**--A certified company that has received credentials from TRS to register products and investment options in the TRS 403(b) Product Registration System.

(3) **Board of trustees**--The board of trustees of the Teacher Retirement System of Texas (TRS).

(4) **Certified company**--A company that meets all certification requirements, that has certified to TRS and been placed on the TRS list of certified companies, and whose certification is not expired, suspended, surrendered, denied, or revoked.

(5) **Certify**--To meet all requirements for certification, as indicated by TRS's inclusion of a company on the TRS list of certified companies.

(6) **Closed**--A TRS registered product for which an employee may no longer make contributions under an existing salary reduction agreement or enter into a new salary reduction agreement.

(7) **Company**--A financial services entity that offers qualified investment products.

(8) **Contract**--An agreement through which an employee purchases or enrolls in a qualified investment product.

(9) **Educational institution**--A school district or an open-enrollment charter school.

(10) **Eligible qualified investment product**--A qualified investment product offered by a company that is certified with TRS and offers:

(A) qualified investment products that are annuity contracts; or

(B) qualified investment products other than annuity contracts.

(11) **Employee**--An employee of an educational institution.

(12) **Investment option**--An individual fund underlying a TRS registered product.

(13) **Platform company**--A certified company that offers, under §403(b)(7) of the Internal Revenue Code of 1986, qualified investment products other than annuity contracts, including a company that offers custodial accounts that hold only investment products issued and registered with TRS by a proprietary company.

(14) **Product**--For the purpose of registration under this chapter, an annuity contract or custodial account, as defined under §403(b)(1) and §403(b)(7) of the Internal Revenue Code of 1986, offered by a certified company.

(15) **Product Registration System**--The TRS online portal through which certified companies register products.

(16) **Proprietary Company**--A certified company that offers eligible qualified investment products to employees of educational institutions for purchase or enrollment. A proprietary company is the issuer of TRS registered products and has primary liability to the employees for performance of the obligations described in the product. "Proprietary company" does not include:

(A) a reinsurance company;

(B) a third party administrator;

(C) an entity performing duties under an administrative services only contract; or

(D) a representative such as a licensed or registered agent, broker, or investment advisor.

(17) **Qualified investment product**--A product that:

(A) meets the requirements of §403(b), Internal Revenue Code of 1986, and its subsequent amendments;

(B) complies with applicable federal insurance and securities laws and regulations; and

(C) complies with applicable state insurance and securities laws and rules.

(18) **Register**--To submit all required information to TRS about products to be offered and to pay the fees prescribed by TRS as indicated by inclusion of the company's individual products on the TRS list of registered products.

(19) **TRS Registered product**--An eligible qualified investment product that has been registered with TRS and is on the list of TRS registered products.

(20) **Representative**--A person, who sells or offers for sale an eligible qualified investment product as an agent of a certified company and who is licensed or registered if required by law.

(21) **Retirement system or TRS**--The Teacher Retirement System of Texas.

(22) **Restricted**--A TRS registered product for which an employee may not enter into a new salary reduction agreement but for which an employee may:

(A) continue to make contributions under an existing salary reduction agreement;

(B) increase or decrease the amount of contributions under an existing salary reduction agreement; and

(C) execute a revised or updated salary reduction agreement with the same or a different employer.

(23) **Salary reduction agreement**--An agreement between an educational institution and an employee to reduce the employee's

salary for the purpose of making direct contributions to or purchases of a qualified investment product.

(24) Specialized department--One or more employees of a certified company or a company affiliated with the certified company dedicated to servicing employee 403(b) accounts or registered products. If the certified company is authorized by the Texas Department of Insurance to issue annuity contracts in the State of Texas, the affiliated company must be part of an Insurance Holding Company System as described in §823.006, Insurance Code.

§53.3. *Maximum Fees, Costs, and Penalties.*

(a) Prior to October 1, 2019, a certified company offering TRS registered products and investment options may not register a product or investment option with fees, costs, or penalties in excess of the amounts established in subsections (a)(1)-(4) and (e) of this section. Prior to November 16, 2019, a certified company offering TRS registered products and investment options may not assess fees, costs, or penalties in excess of the amounts established in subsections (a)(1)-(4) and (e) of this section.

(1) A certified company may charge a front-end sales load or back-end sales load that in the aggregate does not exceed six percent (6%) of the amount identified in the contract as subject to sales load charges, such as premiums paid or the price of the fund shares.

(2) A certified company may charge an annual fixed dollar fee of no more than \$50.00 per year per TRS registered product, contract, policy, or account. A fixed dollar fee is not dependent on account values, loan amounts, or any other amount for its determination.

(3) For a TRS registered product other than an annuity contract and for the portion of an annuity contract that consists of a variable account, a certified company may assess a charge of no more than 2.75 percent annually of the total value of assets in the employee's variable annuity contract account or other investment product account.

(4) A certified company may charge a loan initiation fee of no more than \$50.00. This subsection does not prohibit a company from charging interest on a loan in addition to a loan initiation fee. If the investment product is an annuity contract, loan terms must comply with applicable requirements of insurance laws, including Chapter 1110, Insurance Code.

(b) On or after October 1, 2019, a certified company may not register a product or investment option with fees, costs, or penalties in excess of the amounts established in subsections (b)(1)-(4) and (e). On or after November 16, 2019, a certified company offering TRS registered products and investment options may not assess fees, costs, or penalties in excess of the amounts established in subsections (b)(1)-(4) and (e) of this subsection except as provided in subsection (f) of this section.

(1) A certified company may not register a product or investment options that charges a front-end sales load or a back-end sales load.

(2) A certified company may charge an annual fixed dollar maintenance fee or minimum account fee of no more than \$60.00 per year per registered product, contract, policy, or account. A fixed dollar fee is not dependent on account values, loan amounts, or any other amount for its determination.

(3) A certified company may charge a loan initiation fee of no more than \$25.00. This subsection does not prohibit a company from charging interest on a loan in addition to a loan initiation fee. If the investment product is an annuity contract, loan terms must comply with applicable requirements of insurance laws, including Chapter 1110, Insurance Code.

(4) For a TRS registered product or investment option other than an annuity contract and for the portion of an annuity contract that consists of a variable account, a certified company may not assess an asset-based fee that exceeds the maximum annual asset-based fee by asset class in the following table.

Figure: 34 TAC §53.3(b)(4)

(c) On or after October 1, 2019, a certified company shall register its investment options as follows:

(1) register in the money market asset class any investment option with a portfolio of over 50% of the fund's assets invested in short-term money market securities consistent with the preservation of capital;

(2) register in the diversified bond asset class any investment option with a portfolio of over 50% of the fund's assets invested in U.S. government obligations, corporate bonds, foreign bonds, and high-yield debt securities;

(3) register in the asset allocation class any investment option with a portfolio of over 50% of the fund's assets invested in a mix of stocks, bonds, and cash;

(4) register in the large cap U.S. equity asset class any investment option with a portfolio of over 50% of the fund's assets invested in large-cap U.S. stocks diversified across growth and value styles in the top 70% of the total capitalization of the U.S. equity market;

(5) register in the small/mid cap U.S. equity asset class any investment option with a portfolio of over 50% of the fund's assets invested in mid- and small-cap U.S. stocks diversified across growth and value in the bottom 30% of the total capitalization of the U.S. equity market;

(6) register in the international equity asset class any investment option with a portfolio of over 50% of the fund's assets invested in large-, mid-, and small-cap international stocks that are diversified in growth and value styles across developed and emerging equity markets. These portfolios will have less than 20% of assets invested in U.S. stocks;

(7) register in the global equity asset class any investment option with a portfolio of over 50% of the fund's assets invested in large-, mid-, and small-cap stocks diversified across growth and value styles anywhere in the world. These portfolios have 20%-60% of assets in U.S. stocks;

(8) register in the real estate asset class any investment option with a portfolio of over 50% of the fund's assets invested in mix of mortgage companies, property management companies, and Real Estate Investment Trusts (REITS); and

(9) register in the other asset class any investment option with a portfolio that does not meet the requirements of subsections (c)(1) through (c)(8) of this section.

(d) On or after October 1, 2019, the maximum asset-based fee does not include transaction fees such as:

- (1) redemption fees;
- (2) short-term trading fees;
- (3) closeout fees;
- (4) excessive trading fees; and
- (5) one-time fees, including:
 - (A) transfer fees;

- (B) withdrawal fees; and
- (C) termination fees.

(e) A certified company may charge a surrender or withdrawal charge on an annuity contract account that may not exceed ten percent (10%) of the accumulation (account) value, the individual deposits, or the premiums paid, whichever is specified in the contract. Surrender charges must terminate within ten (10) years of the inception of the employee's contract unless a disclosure is made informing the employee of a longer period of not in excess of twelve (12) years. No surrender or withdrawal charge may be longer than twelve (12) years from the inception of the employee's contract. Surrender or withdrawal charges shall decline annually. Surrender or withdrawal charges imposed for longer than ten (10) years are limited to no more than one percent (1%) in year eleven and one percent (1%) in year twelve. Surrender or withdrawal charges may be based on the accumulation value of an annuity or a component part thereof, as specified and defined in the contract.

(f) If a TRS registered product or investment option that was registered prior to October 1, 2019, is the subject of a salary reduction agreement that was signed before November 16, 2019, and does not exceed the fee limitations of subsections (a)(1) through (a)(4) and (e) of this section, then on or after November 16, 2019, the product is restricted and a company may continue to charge the fees that are authorized under subsections (a)(1) through (a)(4) and (e) of this section for that product and for that product an employee may:

- (1) continue to make contributions to the restricted product under the existing salary reduction agreement;
- (2) increase or decrease the amount of contributions to the restricted product under the existing salary reduction agreement; and
- (3) execute a revised or updated salary reduction agreement with the same or a different employer.

(g) On or after October 1, 2019, all fees charged or assessed by a certified company to an employee must be reported to TRS in the Product Registration System.

(h) This section does not establish or govern the amount of commission a certified company may pay a broker, agent, or other representative.

(i) This section does not authorize a certified company offering qualified investment products that are annuity contracts to charge fees, costs, or penalties in excess of any charges established or approved by the Texas Department of Insurance for the company or for the annuity contract.

§53.4. Qualifications for Certification by Companies Offering Qualified Investment Products and Investment Options that are Annuity Contracts.

(a) A company may certify to TRS that it is a proprietary company that offers qualified investment products and investment options that are annuity contracts if the company meets the requirements of this section.

(b) A company may certify to TRS under this section if the company:

- (1) is authorized to issue annuity contracts in the State of Texas at the time the certification is filed;
- (2) does not assess fees, costs, or penalties in an annuity contract that exceed the maximum amounts established by this chapter; and

(3) provides products that comply with the registration requirements of Article 6228a-5, Texas Revised Civil Statutes, and this chapter, as applicable.

§53.5. Qualifications for Certification by Companies Offering Qualified Investment Products and Investment Options Other than Annuity Contracts.

(a) A company that offers qualified investment products and investment options other than annuity contracts may certify to TRS that it is a proprietary company if it meets the following requirements:

(1) The company has at least five years' experience in managing qualified investment products and has a specialized department dedicated to the servicing of qualified investment products.

(2) The company is licensed and qualified to do business in the State of Texas.

(3) The company, or an affiliate of the company related by common ownership or control, has a current issuer's authorization from the State Securities Board.

(4) The company has not had a license or registration suspended or revoked by state or federal regulators within the five years preceding the date the certification is filed.

(5) The company manages assets totaling at least \$2 billion.

(6) The company does not assess fees, costs, or penalties that exceed the maximum amounts established by this chapter.

(7) The company's products comply with the registration requirements of Article 6228a-5, Texas Revised Civil Statutes, and this chapter, as applicable.

(b) A company that offers qualified investment products and investment options other than annuity contracts may certify to TRS that it is a platform company if it meets the following requirements:

(1) The company has at least five years' experience in managing qualified investment products and has a specialized department dedicated to the servicing of qualified investment products.

(2) The company is licensed and qualified to do business in the State of Texas.

(3) The company is registered as a securities dealer, agent, or investment advisor with the State Securities Board, if required by the State Securities Board or other law.

(4) The company has not had a license or registration suspended or revoked by state or federal regulators within the five years preceding the date the certification is filed.

(5) The company manages accounts totaling at least \$1 billion.

(6) The company does not assess fees, costs, or penalties, inclusive of investment option fees underlying the product, that exceed the maximum amounts established by this chapter.

(7) The products offered by the company comply with the registration requirements of Article 6228a-5, Texas Revised Civil Statutes, and this chapter, as applicable.

§53.6. Application and Fee for Certification.

(a) A company that meets the qualifications for certification may certify to TRS that it offers one or more qualified investment products, which shall be identified in the certification as annuity contracts, qualified investment products other than annuity contracts, including custodial accounts under §403(b)(7) of the Internal Revenue Code of 1986, or both.

(b) A company applies for certification to TRS by providing all information required in this chapter in a form prescribed by TRS for this purpose and by paying the required certification fee.

(c) A company that applies for certification shall pay a certification fee of \$5,000 to TRS at the time its application is filed.

(d) As part of its application for certification, a company shall affirm that each of its representatives is properly licensed and qualified, by training and continuing education, to sell and service the company's eligible qualified investment products and that the company will demonstrate this annually to TRS, as required by Article 6228a-5, Texas Revised Civil Statutes.

(e) As part of its application for certification, a company that offers qualified investment products other than annuity contracts shall disclose to TRS as part of its application whether it provides the following customer services:

(1) Call center services, including enrollment and member support for all program inquiries such as case management, escalation and problem resolution.

(2) Data management services, including creation and maintenance of records, transaction data and history, supplier interfaces and necessary files for updating payroll systems.

(3) Custody services, including state and federal tax withholding and form preparation.

(4) Member information services, including:

(A) providing to each employee an account statement both quarterly and upon request in either written or electronic form as specified by the employee; and

(B) disclosing to each employee the amount of product administration fees, administrative services fees, and investment management fees.

(5) Processing services, including:

(A) depositing member contributions within a required number of business days of receiving all required information; and

(B) releasing funds to a member pursuant to a distribution request or rolling over funds to another account within a required number of business days of receiving all required information.

(6) Plan-level services, including reporting of total assets on an educational institution level upon request and annual disclosure of all investment and administrative services fees paid by employees.

(f) Certification of a company that offers qualified investment products and investment options other than annuity contracts shall not be conditioned on whether the company offers the customer services listed in subsection (e) of this section.

(g) A company applying for certification that offers both annuity contracts and investments other than annuity contracts, including custodial accounts, shall pay one certification fee if the company files its application for both types of qualified investment products at the same time. If the applications are filed separately, a company shall pay a separate certification fee for each separate certification.

(h) A company applying for certification under both §53.5(a) and (b) of this chapter (relating to Qualifications for Certification by Companies Offering Qualified Investment Products Other than Annuity Contracts) shall pay one certification fee if the company files its application under both §53.5(a) and (b) at the same time. If the applications are filed separately, the company shall pay a separate certification fee for each separate application.

(i) If a company proposes to certify more than one legal entity, the company shall submit separate applications and fees for each legal entity.

(j) A company that submits an application for certification shall notify TRS immediately upon discovery that it has submitted erroneous or misleading information in its application. TRS shall deny any application containing erroneous or misleading information unless the company submits a corrected application within five (5) business days after notifying TRS of the erroneous or misleading information.

(k) TRS shall issue a letter or email notice verifying that a company is certified upon determining that it meets the qualifications for certification as required under Article 6228a-5, Texas Revised Civil Statutes and payment of the certification fee.

(l) Certification is effective for five (5) years from the date that TRS issues, by letter or electronic mail notice, that a company has been certified.

(m) Certification remains in effect in accordance with the provisions of this section unless revoked or suspended by TRS or withdrawn by the company through written notice to TRS.

(n) TRS may deny a company's application for certification if the company does not provide all of the required information, if the information provided indicates the company does not meet the requirements for certification, or if TRS receives notification of a violation regarding the company from the Texas Department of Insurance, the State Securities Board, the Texas Attorney General, or the company.

(o) TRS shall notify a company if it determines that the application for certification should be denied. A company whose application for certification is denied may re-apply for certification by submitting a new application and showing that it meets the requirements.

(p) If TRS denies the application for certification, TRS may retain the amount of the certification fee sufficient to reimburse TRS for its administrative costs associated with review of the application. TRS may hold the entire certification fee for no more than forty-five (45) business days after denial in order to determine whether the company will submit a new application for certification.

(q) No portion of a certification fee is refundable if TRS revokes or suspends a certification or if a company surrenders its certification after it has been issued by TRS.

§53.7. *Listing of Certified Companies.*

(a) TRS shall include the name of a certified company on the list maintained on the TRS web site no later than thirty (30) days after certification.

(b) TRS may indicate on the list of certified companies maintained on the TRS web site whether a certified company has complied with the requirements of Article 6228a-5, Texas Revised Civil Statutes and §53.6 of this title regarding annual demonstration.

§53.10. *Registration and Listing of Products and Investment Options.*

(a) Upon receiving approval to register products and investment options, a certified company may access TRS's Product Registration System to register products or investment options as follows:

(1) A proprietary company certified to offer eligible qualified investment products or investment options that are annuity contracts may register annuity products.

(2) A proprietary company certified to offer eligible qualified investment products or investment options other than annuity contracts may register such other investment products or investment options.

(3) A proprietary company certified to offer both annuity contracts and eligible qualified investment products and investment options other than annuity contracts may register both product types.

(4) A platform company certified to offer eligible qualified investment products or investment options, other than annuity contracts, issued and registered with TRS by a proprietary company, may register such other eligible qualified investment products or investment options.

(b) In registering eligible qualified investment products or investment options, a certified company shall provide information concerning all the fees charged to an employee in connection with the participation in, or purchase, sale, or administration of, each eligible qualified investment product or investment option, including any other applicable fees. The information concerning fees shall be provided in the format and manner required by TRS. A certified company shall also provide to TRS a contract for a fixed annuity and a prospectus for an eligible qualified investment product other than a fixed annuity.

(c) A certified company that has been approved to register qualified eligible investment products or investment options shall submit information to TRS on each product and investment option that is required to be registered. During its five-year registration period, a certified company may submit information on additional products and investment options during the registration dates established in this chapter. Registration of an eligible qualified investment product or investment option is effective when TRS posts the product or investment option on the TRS web site. Registration of an eligible qualified investment product or investment option terminates when a company's approval to register products and investment options terminates, regardless of the TRS registered product's or investment option's effective date.

(d) A certified company shall provide to TRS information regarding fees that may be deducted from employee contributions for a registered investment product or investment option by an entity other than the company named in the salary reduction agreement. In order for an eligible qualified investment product or investment option to be registered, the fees charged by the company and the other entity, when combined, shall not exceed the amounts established in §53.3 of this chapter (relating to Maximum Fees, Costs, and Penalties).

(e) A product's or investment option's registration remains in effect in accordance with the provisions of this section unless:

(1) A company surrenders its certification or approval to register products and investment options;

(2) A company's certification or approval to register products and investment options expires; or

(3) TRS revokes or suspends the company's certification or approval to register products and investment options.

(f) Upon verification that all required product and investment option information has been provided, TRS will include the certified company's TRS registered products and investment options on the list maintained on the TRS web site.

§53.15. Notice to Potential Purchaser of Annuity Contracts.

(a) A representative who offers to sell an annuity contract that is or may be the subject of a salary reduction agreement shall provide notice and other information to an employee as required under Article 6228a-5, §11, Texas Revised Civil Statutes.

(b) The notice must be given to the employee at the time an application form is signed.

(c) The form of the notice for an annuity contract shall be as provided by TRS on its web site. A company shall use the form notice as the basis for its annuity contract notices to employee.

(d) A certified company shall provide TRS a copy of its notice relating to a specific contract within ten (10) business days of a request by TRS

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 November 22, 2017.

TRD-201704783

Brian Guthrie

Executive Director

Teacher Retirement System of Texas

Effective date: December 12, 2017

Proposal publication date: September 22, 2017

For further information, please call: (512) 542-6840



34 TAC §§53.6 - 53.9, 53.11 - 53.20

The Teacher Retirement System of Texas (TRS) adopts the repeal of §§53.6 - 53.9 and §§53.11 - 53.20, relating to certification by companies offering qualified investment products to employees of school districts or open-enrollment charter schools through what are commonly referred to as "403(b) plans," as published in the June 16, 2017, issue of the *Texas Register* (42 TexReg 3125). TRS repeals the rules at the same time the agency adopts new rules that update the application requirements and processes a company follows to certify to offer annuity or non-annuity products and investment options to public education employees through a salary reduction agreement and to register annuity and non-annuity products and investment options with TRS. The adoption of the repealed, new and amended rules are part of TRS' four-year rule review of Chapter 53 in Title 34, Part 3, of the Texas Administrative Code (TAC).

TRS repeals the following rules: §53.6, relating to procedures for certification; §53.7, relating to certification fee; §53.8, relating to list of certified companies; §53.9, relating to notice to potential purchaser; §53.11, relating to coordination with regulatory agencies; §53.12, relating to company notification of non-compliance; §53.13, relating to suspension or revocation of certification; §53.14, relating to re-certification; §53.15, relating to product registration requirement; §53.16, relating procedure for product registration; §53.17, relating to product registration fee; §53.18, relating to list of registered products; §53.19, relating to proceedings to suspend or revoke certification or registration; and §53.20, relating to administrative service providers.

No comments were received regarding the repeal of these rules.

Statutory Authority: The adoption of the repealed rules is pursuant to the following statute: §6(a) of Article 6228a-5, Vernon's Texas Civil Statutes, which authorizes TRS, after consultation with the Texas Department of Insurance, the Texas Department of Banking, and the State Securities Board, to adopt rules to administer §§5, 6, 7, 8, 8A, 9A, 9B, 11, 12, and 13 of Article 6228a-5 relating to 403(b) company certification and product registration; and §825.102, Government Code, which authorizes the Board to

adopt rules for the administration of the funds of the retirement system.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 22, 2017.

TRD-201704784

Brian Guthrie

Executive Director

Teacher Retirement System of Texas

Effective date: December 12, 2017

Proposal publication date: June 16, 2017

For further information, please call: (512) 542-6840



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 28. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES SUBCHAPTER A. DEFINITIONS AND GENERAL CODIS PROVISIONS

37 TAC §§28.1, 28.2, 28.6

The Texas Department of Public Safety (the department) adopts amendments to §§28.1, 28.2, and 28.6, concerning Definitions and General CODIS Provisions. These sections are adopted without changes to the proposed text as published in the October 20, 2017, issue of the *Texas Register* (42 TexReg 5839) and will not be republished.

Pursuant to Government Code, §2001.039, the department reviewed this chapter and determined an update to these rules was necessary to improve clarity and update the rules in accordance with current statutes.

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to the director's rule-making authority in Texas Government Code, §§411.144(a), 411.146(c)(1), 411.147(a), 411.149, and 411.152(a) and (d), and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under 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 November 21, 2017.

TRD-201704751

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: December 11, 2017

Proposal publication date: October 20, 2017

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



SUBCHAPTER B. CODIS RESPONSIBILITIES OF THE DIRECTOR

37 TAC §§28.24, 28.26, 28.29

The Texas Department of Public Safety (the department) adopts amendments to §§28.24, 28.26, and 28.29, concerning CODIS Responsibilities of the Director. These sections are adopted without changes to the proposed text as published in the October 20, 2017, issue of the *Texas Register* (42 TexReg 5840) and will not be republished.

Pursuant to Government Code, §2001.039, the department reviewed this chapter and determined an update to these rules was necessary to improve clarity and update the rules in accordance with current statutes.

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to the director's rule-making authority in Texas Government Code, §411.147 and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under 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.

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TRD-201704752

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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



SUBCHAPTER C. CODIS RESPONSIBILITIES OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE

37 TAC §28.46, §28.47

The Texas Department of Public Safety (the department) adopts amendments to §28.46 and §28.47, concerning CODIS Responsibilities of the Texas Department of Criminal Justice. These sections are adopted without changes to the proposed text as published in the October 20, 2017, issue of the *Texas Register* (42 TexReg 5842) and will not be republished.

Pursuant to Government Code, §2001.039, the department reviewed this chapter and determined an update to these rules was

necessary to improve clarity and update the rules in accordance with current statutes.

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to the director's rule-making authority in Texas Government Code, §§411.146, 411.148, 411.152(a), and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under 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.

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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 D. CODIS RESPONSIBILITIES OF THE TEXAS JUVENILE JUSTICE DEPARTMENT

37 TAC §28.66

The Texas Department of Public Safety (the department) adopts an amendment to §28.66, concerning Advance Notice of Release. This section is adopted without changes to the proposed text as published in the October 20, 2017, issue of the *Texas Register* (42 TexReg 5842) and will not be republished.

Pursuant to Government Code, §2001.039, the department reviewed this chapter and determined an update to these rules was necessary to improve clarity and update the rules in accordance with current statutes.

No comments were received regarding the adoption of this amendment.

This amendment is adopted pursuant to the director's rule-making authority in Texas Government Code, §§411.148(f-1), 411.152(a), and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under 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.

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TRD-201704754

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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



SUBCHAPTER F. FORENSIC DNA LABORATORIES

37 TAC §28.92

The Texas Department of Public Safety (the department) adopts amendments to §28.92, concerning Minimum Standards. This section is adopted without changes to the proposed text as published in the October 20, 2017, issue of the *Texas Register* (42 TexReg 5843) and will not be republished.

Pursuant to Government Code, §2001.039, the department reviewed this chapter and determined an update to these rules was necessary to improve clarity and update the rules in accordance with current statutes.

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to the director's rule-making authority in Texas Government Code, §411.144 and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under 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 November 21, 2017.

TRD-201704755

D. Phillip Adkins
General Counsel

Texas Department of Public Safety

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



SUBCHAPTER G. CODIS USER LABORATORIES

37 TAC §§28.103, 28.107, 28.109

The Texas Department of Public Safety (the department) adopts amendments to §§28.103, 28.107, and 28.109, concerning CODIS User Laboratories. These sections are adopted without changes to the proposed text as published in the October 20, 2017, issue of the *Texas Register* (42 TexReg 5844) and will not be republished.

Pursuant to Government Code, §2001.039, the department reviewed this chapter and determined an update to these rules was necessary to improve clarity and update the rules in accordance with current statutes.

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to the director's rule-making authority in Texas Government Code, §§411.144, 411.146(c), and 2001.039, which require state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under 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 November 21, 2017.

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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 H. DATABASE RECORDS

37 TAC §§28.121 - 28.124, 28.130

The Texas Department of Public Safety (the department) adopts amendments to §§28.121 - 28.124, 28.130, concerning Database Records. These sections are adopted without changes to the proposed text as published in the October 20, 2017, issue of the *Texas Register* (42 TexReg 5845) and will not be republished.

Pursuant to Government Code, §2001.039, the department reviewed this chapter and determined an update to these rules was necessary to improve clarity and update the rules in accordance with current statutes.

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to the director's rule-making authority in Texas Government Code, §§411.144, 411.146, 411.1471, 411.152 and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under 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 November 21, 2017.

TRD-201704757
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: December 11, 2017
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For further information, please call: (512) 424-5848



SUBCHAPTER L. CATALOGING, DELIVERY, AND DISPOSITION OF BIOLOGICAL EVIDENCE--COUNTY WITH POPULATION LESS THAN 100,000

37 TAC §28.193, §28.194

The Texas Department of Public Safety (the department) adopts amendments to §28.193 and §28.194, concerning Cataloging, Delivery, and Disposition of Biological Evidence--County with Population Less Than 100,000. These sections are adopted without changes to the proposed text as published in the October 20, 2017, issue of the *Texas Register* (42 TexReg 5846) and will not be republished.

Pursuant to Government Code, §2001.039, the department reviewed this chapter and determined an update to these rules was necessary to improve clarity and update the rules in accordance with current statutes.

No comments were received regarding the adoption of these amendments.

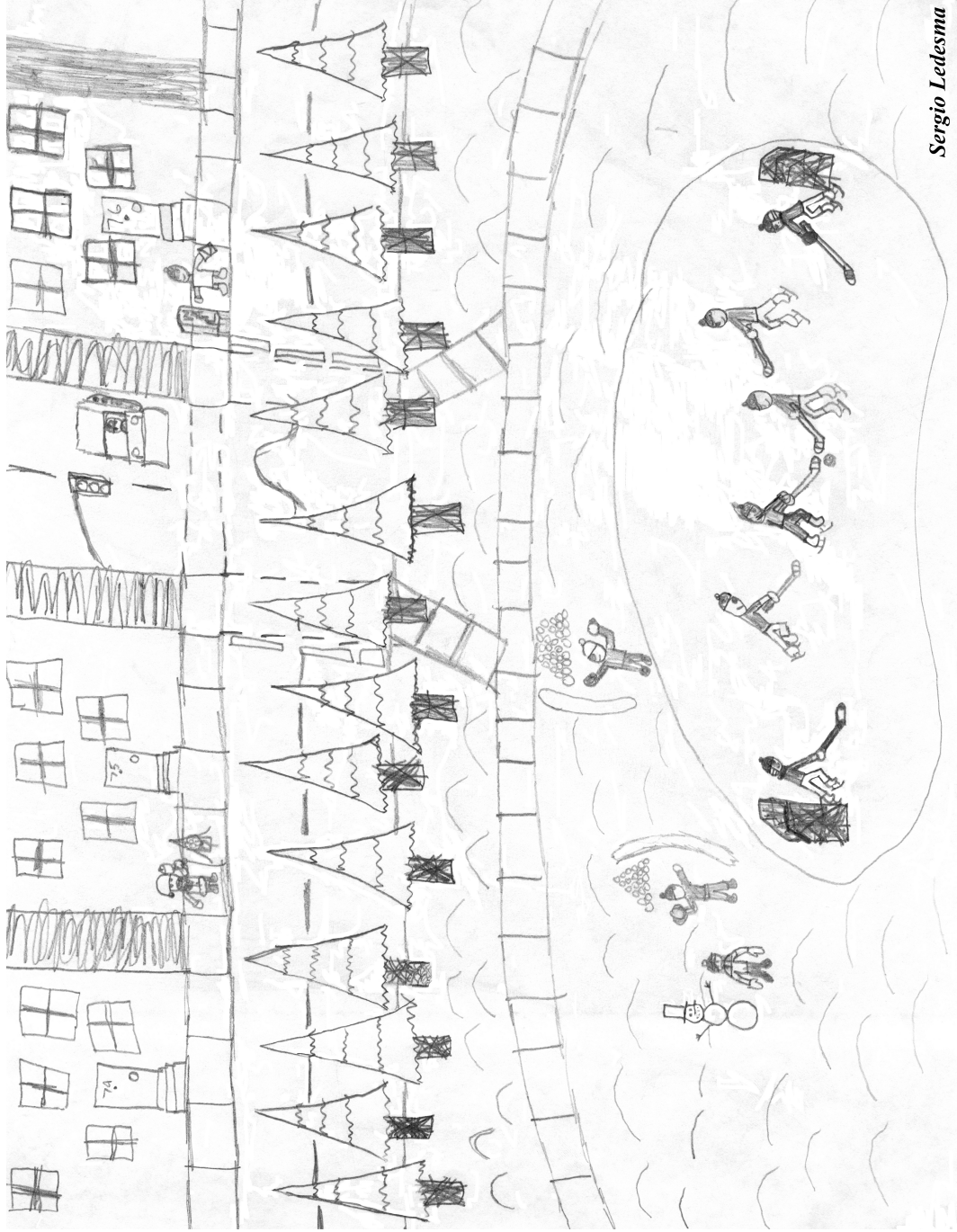
These amendments are adopted pursuant to the director's rule-making authority in Texas Government Code, §§411.144, 411.146(c)(1), 411.152 and §2001.039, which require state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under 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 November 21, 2017.

TRD-201704758
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: December 11, 2017
Proposal publication date: October 20, 2017
For further information, please call: (512) 424-5848





Sergio Ledesma

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 Alcoholic Beverage Commission

Title 16, Part 3

The Texas Alcoholic Beverage Commission proposes to review 16 TAC §45.111, Advertising Signs at Charitable or Civic Events, in accordance with Texas Government Code §2001.039. An assessment will be made by the Commission as to whether the reasons for adopting the rule continue to exist. The review will examine whether the rule is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, by facsimile transmission to (512) 206-3280, or by email to rules@tabc.texas.gov. Comments will be accepted for 30 days following publication of this notice in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the review on Thursday, January 4, 2018, at 1:30 p.m. in the commission meeting room on the first floor at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

TRD-201704847

Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

Filed: November 28, 2017



Adopted Rule Reviews

Texas State Board of Examiners of Psychologists

Title 22, Part 21

The Texas State Board of Examiners of Psychologists has completed the rule review of the Texas Administrative Code, Title 22, Part 21, Texas State Board of Examiners of Psychologists rules.

Chapter 461. General Rulings

Chapter 463. Applications and Examinations

Chapter 465. Rules of Practice

Chapter 469. Complaints and Enforcement

Chapter 470. Administrative Procedure

Chapter 471. Renewals

Chapter 473. Fees

This review is conducted pursuant to the Texas Government Code §2001.039. The Board reviewed and received no comments on the proposed review, which was published in the October 13, 2017, issue of the *Texas Register* (42 TexReg 5709). The Texas State Board of Examiners of Psychologists has determined that the reasons for adopting rules continue to exist.

This concludes and completes the review of Chapters 461, 463, 465, 469, 470, 471 and 473.

TRD-201704819

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Filed: November 28, 2017





Angel Banda
6th Grade

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §25.247(c)(2)(B)

Texas-New Mexico Power	August 31, 2018
AEP Texas	April 1, 2019
CenterPoint Energy Houston Electric	July 1, 2019
Wind Energy Transmission Texas	October 1, 2019
Cross Texas Transmission	February 3, 2020
Sharyland Utilities LP and Sharyland Distribution Services LLC	July 1, 2020
Lone Star Transmission	September 1, 2020
Electric Transmission Texas	February 1, 2021
Oncor Electric Delivery Company	October 1, 2021

Disciplinary Guidelines for Criminal Conduct

Figure: 22 TAC §213.28(c)

OFFENSE	PENALTY F = Felony M = Misdemeanor	PENAL CODE SECTION (or Crim. Pro. ch. 62)	NOTES
*Abandonment/ Endangerment of a Child	F	<u>22.041</u>	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Agree to Abduct Child for Remuneration: Younger than 18	F	<u>25.031</u>	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Aiding Suicide: Serious Bodily Injury/Death	F	<u>22.08</u>	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Assault, Aggravated	F	<u>22.02</u>	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Attempt, Conspiracy, or Solicitation of ch. 62 offense	F, M	<u>ch. 62</u>	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Burglary (if punishable under Penal Code §30.02(d) and ch. 62 offense)	F	<u>ch. 62 (§62.001(5) (D))</u>	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Capital Murder	F	<u>19.03</u>	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Child Pornography, Possession or Promotion	F	<u>43.26(a),(e) (ch. 62)</u>	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Continuous Sexual Abuse of Young Child or Children	F	<u>21.02</u>	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Indecency w/Child	F	<u>21.11 (ch. 62)</u>	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Indecent exposure x 2, if meets ch. 62 requirements	M	<u>21.08 (ch. 62)</u>	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Injury to Child/Elderly/Disabled	F	<u>22.04</u>	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.

OFFENSE	PENALTY F = Felony M = Misdemeanor	PENAL CODE SECTION (or <u>Crim. Pro. ch. 62</u>)	NOTES
*Kidnapping	F	<u>20.03, 20.04 (ch. 62)</u>	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Manslaughter	F	<u>19.04</u>	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Murder	F	<u>19.02</u>	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Offenses for Which Registration as a Sex Offender is Required Under Ch. 62	F, M	<u>§62.001(5)</u>	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Online Solicitation of a Minor	F	<u>33.021(b)(c), (f); (ch. 62)</u>	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Prostitution, Compelling	F	<u>43.05 (ch. 62)</u>	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Protective Order, Violation	F	<u>25.07, 25.071</u>	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Robbery	F	<u>29.02</u>	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Robbery, Aggravated	F	<u>29.03</u>	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Sale or Purchase of a Child	F	<u>25.08</u>	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Sexual Assault	F	<u>22.011 (ch. 62)</u>	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Sexual Assault, Aggravated	F	<u>22.021 (ch. 62)</u>	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Sexual Conduct, Prohibited	F	<u>25.02 (ch. 62)</u>	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
*Sexual Performance by Child	F	<u>43.24(d), 43.25(b), (ch. 62)</u>	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.

OFFENSE	PENALTY F = Felony M = Misdemeanor	PENAL CODE SECTION (or Crim. Pro. ch. 62)	NOTES
*Unlawful Restraint	F	<u>20.02</u>	If on or after September 1, 2005, revocation/denial of licensure is required by Tex. Occ. Code §301.4535.
Aggravated Perjury: Offense Against Public Administration that involves knowingly engaging in deceptive and dishonest conduct by making a false statement in connection with an official proceeding.	F	<u>37.03</u>	
Arson: Offense Against Property that involves intent to destroy or damage property and involves knowledge that financial or personal harm may result and/or includes the reckless endangerment of a person's life or safety.	F	<u>28.02(d)</u>	
Assault: Offense Against the Person that involves intentionally, knowingly, or recklessly causing bodily injury to another person.	F	<u>22.01</u>	
Bribery: Offense Against Public Administration that involves intentionally or knowingly conferring, agreeing to confer, soliciting, or accepting benefits as consideration for a person's vote, decision, or recommendation.	F	<u>36.02</u>	
Burglary: Offense Against	F	<u>30.02</u>	

OFFENSE	PENALTY F = Felony M = Misdemeanor	PENAL CODE SECTION (or <u>Crim. Pro. ch. 62</u>)	NOTES
Property that involves entering another's property with intent to commit theft or harm to another person.			
Burglary of Vehicles: Offense Against Property that involves breaking into a vehicle with the intent to commit a felony or theft.	F	<u>30.04</u>	
Credit Card or Debit Card Abuse: Offense Against Property that involves an intent to obtain a benefit fraudulently through the use of a credit or debit card that is expired or revoked, has not been issued to him/her, and/or without the consent of the cardholder.	F	<u>32.31</u>	
Criminal Attempt or Conspiracy: Inchoate (Preparatory) Offense for an offense listed in Guidelines.	F	<u>15.01, 15.02</u>	
Criminally Negligent Homicide: Offense Against the Person that involves behavior where the offender engages in conduct that falls below the standard required of ordinary people and a death results.	F	<u>19.05</u>	
Cruelty to Animals: Offense Against Public Order and Decency that involves the intentional or knowing infliction of torture on, neglect of, or unreasonable abandonment of a domesticated or captured animal.	F	<u>42.09</u>	
Driving While Intoxicated	F	<u>49.09</u>	

OFFENSE	PENALTY F = Felony M = Misdemeanor	PENAL CODE SECTION (or Crim. Pro. ch. <u>62</u>)	NOTES
Offenses Against Public Health, Safety, and Morals that by the repetitiveness of the conduct indicates a possible issue with substance abuse or chemical dependency which may affect the nurse's ability to safely perform his/her duties and/or threaten public safety.			
Driving While Intoxicated With Child Passenger: Offense Against Public Health, Safety, and Morals that involves operating a motor vehicle while intoxicated when the vehicle is occupied by a passenger under the age of 15.	F	<u>49.045</u>	
Drug Violations: Crimes involving drugs that include the possession, misappropriation and misuse of controlled substances as regulated by Chs. 481, 482 and 483, Health & Safety Code.	F	Health & Safety Code Chs. <u>481, 482, 483</u>	
Evading Arrest or Detention: Offense Against Public Administration that involves intentionally fleeing from a known police officer or federal investigator who is lawfully attempting to detain or arrest him/her.	F	<u>38.04</u>	
False Report or Statement: Offense Against Property that involves intentionally or knowingly making a false material representation to obtain money or property.	F, M	<u>32.32, 42.06</u>	

OFFENSE	PENALTY F = Felony M = Misdemeanor	PENAL CODE SECTION (or Crim. Pro. ch. 62)	NOTES
Forgery: Offense Against Property that involves an intent to defraud or harm another .	F, M	<u>32.21</u>	
Fraudulent Destruction, Removal, or Concealment of Writing: Offense Against Property that involves an intent to defraud or harm another through the destruction, removal, concealment, substitution, or alteration of a writing that impairs the use of the writing.	F, M	<u>32.47</u>	
Fraudulent Use of Possession of Identifying Information: Offense Against Property that involves an intent to defraud or harm another through the possession, transfer, or use of another person's identifying information without consent.	F	<u>32.51</u>	
Hindering Apprehension or Prosecution: Offense Against Public Administration that involves intentionally hindering the arrest, prosecution, conviction, or punishment of another person by harboring, concealing, aiding, or warning the other person.	F	<u>38.05</u>	
Improper Photography or Visual Recording: Offense Against the Person that involves engaging in the secret photography of another person for purposes of sexual gratification.	F	<u>21.15</u>	
Improper Relationship between Educator and Student: Offense	F	<u>21.12</u>	

OFFENSE	PENALTY F = Felony M = Misdemeanor	PENAL CODE SECTION (or Crim. Pro. ch. 62)	NOTES
Against the Person that involves a teacher engaging in sexual contact with a primary or secondary school student.			
Insurance Fraud: Claim > \$500: Offense Against Property that involves the intent to defraud or deceive another of at least \$500 by using information known to contain false or misleading material information.	F	<u>35.02(c)</u>	
Insurance Fraud: Claim ≤ \$500: Offense Against Property that involves an intent to defraud or deceive another by using information known to contain false or misleading material information, which by its own definition is deemed unprofessional or dishonorable conduct as defined in TOC §301.452(b)(10).	M	<u>35.02(c)(1)-(3)</u>	
Insurance Fraud: Intent to Defraud: Offense Against Property that involves knowingly making a false material representation to an insurance company with the intent of defrauding the insurance company of at least \$1500.00.	F	<u>35.02(a-1), (d)</u>	
Interference with Emergency Request for Assistance	F	<u>42.062</u>	
Intoxication Assault: Offense Against Public Health, Safety,	F	<u>49.07</u>	

OFFENSE	PENALTY F = <u>Felony</u> M = <u>Misdemeanor</u>	PENAL CODE SECTION (or <u>Crim. Pro. ch. 92</u>)	NOTES
and Morals that causes serious bodily injury to another person due to the person's own intoxicated state while operating a vehicle, aircraft, or amusement ride.			
Intoxication Manslaughter: Offense Against Public Health, Safety, and Morals that causes the death of another person due to the person's intoxicated state while operating a vehicle, aircraft, or amusement ride.	F	49.08	
Medicaid Fraud > \$1500: Offense Against Property that involves knowingly making a false material representation with the intent of recovering Medicaid payments of at least \$1500.00. The offense may also involve seeking certification of a hospital, a nursing facility, skilled nursing facility, hospice, an intermediate care facility for the mentally retarded, assisted living facility, or a home health agency.	F	35A.02(b)(4)-(7)	
See Note At End of Document.			
Medicaid Fraud < \$1500: Offense Against Property that involves knowingly making a false material representation with the intent of recovering Medicaid payments of less than \$1500.00 which would not be authorized but for the misrepresentations.	M	35A.02(b)(2)-(3)	

OFFENSE	PENALTY F = Felony M = Misdemeanor	PENAL CODE SECTION (or <u>Crim. Pro. ch. 62</u>)	NOTES
The offense may also involve seeking certification of a hospital; a nursing facility, skilled nursing facility; hospice; an intermediate care facility for the mentally retarded; assisted living facility; or a home health agency.			
See Note At End of Document.			
Misapplication of Fiduciary Property or Property of Financial Institution: Offense Against Property that involves an intentional, knowing, or reckless misapplication of property that he/she holds as a fiduciary for a financial institution.	F, M	<u>32.45</u>	
Money Laundering ≥ \$1500: Offense Against Property that involves knowingly engaging in a criminal enterprise to conceal, invest or possess at least \$1500.00 known to be the proceeds of illegal activity.	F	<u>34.02(e)(1)-(4)</u>	
Obscenity, Participates/Wholesale Promotion: Offense Against Public Order and Decency that involves the intent to wholesale promote any obscene material, obscene device, or activity.	F	<u>43.23</u>	
Obstruction or Retaliation: Offense Against Public Administration that involves intentionally or knowingly harming or threatening to harm	F	<u>36.06</u>	

OFFENSE	PENALTY F = Felony M = Misdemeanor	PENAL CODE SECTION (or Crim. Pro. ch. 62)	NOTES
another in retaliation for that person's lawful report of a crime or status as a witness, informant, or public.			
Perjury: Offense Against Public Administration that involves making a false statement under oath with the intent to deceive.	M	<u>37.02</u>	
Prohibited Substances and Items in Correctional Facility: Offense Against Public Administration that involves possessing and/or providing prohibited substances to a person confined in a correctional facility.	F	<u>38.11</u>	
Prohibited Weapon: Offense Against Public Health, Safety, and Morals that involves the intentional or knowing possession, manufacture, transport, repair, or sale of restricted weapons.	F	<u>46.05</u>	
Prostitution, Prostitution or Promotion of, or Aggravated Promotion: Offense Against Public Order and Decency involving offering/repeatedly offering to engage in sexual conduct for a fee or promoting others to engage in sex for a fee.	F	<u>43.02, 43.04</u>	
Resisting Arrest, Use of Deadly Weapon: Offense Against Public Administration that involves using a deadly weapon against another person.	F	<u>38.03(d)</u>	

OFFENSE	PENALTY F = Felony M = Misdemeanor	PENAL CODE SECTION (or <u>Crim. Pro. ch. 62</u>)	NOTES
Securing Execution of Document by Deception: Offense Against Property that involves an intent to defraud or harm another by deception by causing another person to sign, execute, or file a document that affects the person's property or pecuniary interests.	F, M	<u>32.46</u>	
Stalking: Offense Against Public Order and Decency that involves a person knowingly engaging in repetitive conduct that is intended to be threatening in nature and imposing a fear of bodily injury or death on another person.	F	<u>42.072(b)</u>	
Tampering with Government Record: Offense Against Public Administration that requires an intent to defraud or harm another by destroying or falsifying a government record.	F, M	<u>37.10</u>	
Tampering With or Fabricating Physical Evidence: Offense Against Public Administration that involves altering, destroying, concealing, or falsely presenting a record with the intent to impair its use or availability during an investigation or proceeding and/or alter the outcome of the investigation or proceeding.	F, M	<u>37.09</u>	
Tampering with Witness: Offense Against Public Administration that involves coercing or offering, conferring,	F	<u>36.05</u>	

OFFENSE	PENALTY F = Felony M = Misdemeanor	PENAL CODE SECTION (or Crim. Pro. ch. 62)	NOTES
or agreeing to confer a benefit on a witness or potential witness with the intent to influence the witness to provide false testimony, to withhold testimony, or to elude the legal process.			
Terroristic Threat: Offense Against Persons that involves threatening violence to persons or property.	F, M	<u>22.07</u>	
Theft ≤ \$1499: Offense Against Property that involves an intent to deprive person of his/her property without his/her consent.	M	<u>31.03(e)(1)-(3)</u>	
Theft ≥ \$1500: Offense Against Property that involves an intent to deprive person of his/her property without his/her consent.	F	<u>31.03(e)(4)-(7)</u>	
Theft of Service: Offense Against Property that involves an intent to avoid payment for services and intentionally or knowingly secures the services by deception, threat, diversion, or false token.	F, M	<u>31.04</u>	
Trafficking of Persons: Offense Against the Person that involves knowingly trafficking another person with the intent that the other person engage in forced labor or services and/or trafficking another person and causing the person to engage in certain criminal acts through	F	<u>20A.02</u>	

OFFENSE	PENALTY F = Felony M = Misdemeanor	PENAL CODE SECTION (or <u>Crim. Pro. ch. 62</u>)	NOTES
fraud, coercion, or force.			
Vehicle, Unauthorized Use: Offense Against Property that involves an intentional or knowing act to deprive a person of his/her vehicle without his/her consent.	F	31.07	
Violation of Civil Rights of Person in Custody/Improper Sexual Acts With a Person In Custody: Offense Against Public Administration that involves intentionally denying or impeding a another person in custody at a correctional facility a lawful right, privilege, or immunity and/or engaging in sexual conduct with a person in custody at a correctional or youth facility.	F	39.04	

* In accordance with Texas Occupations Code §301.4535, licensees or applicants for licensure receiving judicial orders for these designated offenses on or after September 1, 2005, shall not be licensed, shall be revoked, and/or shall not be renewed and not considered for re-licensure until at least the fifth anniversary following release from probation or community service has occurred. This does not prevent a nurse or applicant for licensure from exercising any right or privilege to have a formal hearing as established by virtue of Texas Occupations Code §301.454(c).

Note: Licensees may be excluded from working in various federally-funded facilities for convictions for program-related fraud and patient abuse, licensing board actions and default on Health Education Assistance Loans. The Office of Inspector General states that "[n]o payment will be made by any Federal health care program for any items or services furnished, ordered, or prescribed by an excluded individual or entity. Federal health care programs include Medicare, Medicaid, and all other plans and programs that provide health benefits funded directly or indirectly by the United States (other than the Federal Employees Health Benefits Plan). For exclusions implemented prior to August 4, 1997, the exclusion covers the following Federal health care programs: Medicare (Title XVIII), Medicaid (Title XIX), Maternal and Child Health Services Block Grant (Title V), Block Grants to States for Social Services (Title XX) and State Children's Health Insurance (Title XXI) programs." For more information, see <http://www.oig.hhs.gov/fraud/exclusions/aboutexclusions.html>, and 1 Tex. Admin. Code §§371.1655 & 371.1657 (mandatory and permissive exclusions from Medicaid and Title V, XIX, XX, and CHIP programs by the Texas Health and Human Services Commission, Office of Inspector General).

The Board's recommendation regarding licensure is independent of any decision by an employer or potential employer to hire a person with a criminal history.

Figure: 34 TAC Chapter 53 - Preamble

403(b) Rule Review and Stakeholder Input Timeline	
September 2016	TRS Board of Trustees Policy Committee authorized the rule review.
October 2016	Notice of proposed rule review posted in <i>Texas Register</i> .
December 12, 2016	First informal conference and discussion of pre-published questions.
January – March, 2017	Benchmarking, data collection, and analysis.
February 2017	Public presentation to TRS Board of Trustees on 403(b) program potential rule amendments.
June 1, 2017	Public presentation at June 2017 Policy Committee meeting and committee authorization of rules for public comment publication in the <i>Texas Register</i> .
June 16, 2017	Proposed rules are published in the <i>Texas Register</i> . 30-day comment period begins. Received written comments from: <ul style="list-style-type: none"> • 76 financial advisors; • 7 certified companies; • 2 TPAs; • 2 industry associations; • 2 individuals representing themselves; and • 1 school association.
June 28, 2017	Second informal conference. 55 individuals attended, including representatives from 10 certified companies. Received oral comments from: <ul style="list-style-type: none"> • 6 financial advisors; • 4 certified companies; • 2 TPAs; • 2 industry associations; • 2 school associations; and • 2 individuals representing themselves.
June – September, 2017	Met with the Texas Department of Insurance, State Securities Board, and the Texas Department of Banking to discuss rule provisions. Data collection, benchmarking and analysis, including surveying certified companies on the impact of proposed rules. Receive additional input from stakeholders on potential revisions to proposed rules. Held individual meetings with: <ul style="list-style-type: none"> • 6 certified companies; • 4 TPAs; • 3 regulatory entities; • 2 industry associations; • 1 school association; and • 1 record keeper.

	Developed potential rule revisions for notice in the <i>Texas Register</i> .
July 21, 2017	Under Executive Director's authority, publish in the <i>Texas Register</i> proposed rule amendments to adjust the certification and registration fees for certified companies. 30-day comment period begins.
September 1, 2017	Impact analysis presented to the TRS Board of Trustees, including results from survey data and potential revisions to proposed rules.
September 22, 2017	Proposed rules are published in the <i>Texas Register</i> . 30-day comment period begins. Withdraw from the <i>Texas Register</i> rules previously proposed on June 16, 2017 and July 21, 2017.
October 23, 2017	30-day comment period for September 22, 2017 proposed rules closes. Received last set of input from stakeholders.
October 27, 2017	Final adoption of proposed rule amendments at TRS Board of Trustees meeting.

Figure: 34 TAC §53.3(b)(4)

Asset Class	Maximum Annual Asset-Based Fee For Variable Annuity Products and Investment Options	Maximum Annual Asset-Based Fee For Non-Annuity Products and Investment Options
Money Market	1.90%	1.65%
Diversified Bond	2.25%	2.00%
Asset Allocation	2.25%	2.00%
Large Cap U.S. Equity	2.25%	2.00%
Small/Mid Cap U.S. Equity	2.45%	2.20%
International Equity	2.55%	2.30%
Global Equity	2.55%	2.30%
Real Estate	2.60%	2.35%
Other	2.70%	2.45%

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.

Office of the Attorney General

Texas Water Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *State of Texas v. Verona Special Utility District*, Cause No. D-1-GN-17-002838; in the 250th Judicial District Court, Travis County, Texas.

Nature of suit and Defendant's operations: Defendant Verona Special Utility District is a water district located near the cities of Blue Ridge and Princeton in Collin County, Texas. The State initiated this suit to enforce Texas statutes and rules governing water districts. Specifically, Defendant had failed to submit its annual financial reporting documents to the Texas Commission on Environmental Quality ("TCEQ") for fiscal years 2003 to 2015; and failed to provide the TCEQ with the District's registration information.

Proposed Agreed Final Judgment: The proposed Agreed Final Judgment and Permanent Injunction ("Judgment") requires Defendant to submit all outstanding financial reports and annual filing affidavit for each of the fiscal years 2003 through 2016 to TCEQ within thirty days of the Judgment, and to make timely submissions of such documents for all future fiscal years. It assesses civil penalties against Defendant in the amount of \$22,250, and awards the State its reasonable attorney's fees in the amount of \$10,000.

For a complete description of the proposed settlement, the complete Judgment should be reviewed. Requests for copies of the Judgment, and written comments on the proposed settlement, should be directed to Phillip Ledbetter, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548; phone (512) 475-4152; facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201704806
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: November 27, 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, 303.009 and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/27/17 - 12/03/17 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/27/17 - 12/03/17 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/17 - 12/31/17 is 5.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/17 - 12/31/17 is 5.00% for commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-201704750

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: November 21, 2017

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 12/04/17 - 12/10/17 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/04/17 - 12/10/17 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005³ for the period of 11/01/17 - 11/30/17 is 18% or Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 11/01/17 - 11/30/17 is 18% for Commercial over \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 01/01/18 - 03/31/18 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 01/01/18 - 03/31/18 is 18% for Commercial over \$250,000.

The retail credit card quarterly rate as prescribed by §303.009¹ for the period of 01/01/18 - 03/31/18 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The lender credit card quarterly rate as prescribed by §346.101¹ for the period of 01/01/18 - 03/31/18 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009⁴ for the period of 01/01/18 - 03/31/18 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 01/01/18 - 03/31/18 is 18% for Commercial over \$250,000.

The retail credit card annual rate as prescribed by §303.009¹ for the period of 01/01/18 - 03/31/18 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/17 - 12/31/17 is 5.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed §304.003 for the period of 12/01/17 - 12/31/17 is 5.00% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

³ For variable rate commercial transactions only.

⁴ Only for open-end credit as defined in §301.002(14), Texas Finance Code.

TRD-201704817

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: November 28, 2017

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Texas Education Agency

Request for Applications Concerning the 2018-2019 Technology Lending Grant

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under RFA #701-18-103 from eligible applicants, which include local educational agencies (LEAs) that have an enrollment of at least 40% economically disadvantaged students at the participating campus(es) and either (a) LEAs with a Technology Plan on file with TEA for the 2016-2017 school year or (b) that show evidence of a current local technology plan on participating campuses. The 2016-2017 Texas Academic Performance Report (TAPR) Campus Report data from the Texas Student Data System Public Education Information Management System (TSDS PEIMS), <https://rptsrv1.tea.texas.gov/perfreport/tapr/2017/srch.html?srch=C>, will be used to determine the percentage of economically disadvantaged students at the participating campus(es).

Description. Texas Education Code, §32.301, as added by House Bill 3526, Regular Session, 2017, authorizes TEA to establish the Technology Lending Grant. The program awards grants to LEAs to implement a technology lending program to loan students the equipment necessary to access and use digital instructional materials. With the 2018-2019 Technology Lending Grant, LEAs can continue using digital instructional materials while ensuring equitable access for students through loaned equipment for learning off campus.

For the purposes of this program, "equipment" means personal, portable wireless devices such as laptops, tablets, or other technological devices that provide access to those digital materials required to meet the objectives of the district's or charter school's technology plan. The purchase of equipment includes an operating system and productivity software, where applicable.

Dates of Project. The 2018-2019 Technology Lending Grant will be implemented during the 2018-2019 school year. Applicants should plan for a starting date of no earlier than May 1, 2018, and an ending date of no later than August 31, 2019.

Project Amount. Approximately \$10 million is available for funding the 2018-2019 Technology Lending Grant. It is anticipated that approximately 140 grants will be awarded ranging in amounts from \$50,000 to \$150,000. This project is funded 100 percent with state funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. The complete RFA will be posted on the TEA Grant Opportunities web page at <http://tea4avoswald.tea.state.tx.us/GrantOpportunities/forms/Grant-ProgramSearch.aspx> for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. To make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to techlending@tea.texas.gov, the TEA email address identified in the program guidelines of the RFA, no later than Friday, December 22, 2017. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by Monday, January 5, 2018. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Tuesday, February 6, 2018, to be eligible to be considered for funding. TEA will not accept applications by email. Applications may be delivered to the TEA visitors' reception area on the second floor of the William B. Travis Building, 1701 North Congress Avenue (at 17th Street and North Congress, two blocks north of the Capitol), Austin, Texas 78701 or mailed to Document Control Center, Grants Administration Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494.

TRD-201704854

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: November 29, 2017

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is January 8, 2018. 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 January 8, 2018. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Adventure Autos Of Dallas LLC; DOCKET NUMBER: 2017-0537-AIR-E; IDENTIFIER: RN109711044; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: used car lot; RULES VIOLATED: 30 TAC §114.20(c)(1) and Texas Health and Safety Code, §382.085(b), by failing to ensure a motor vehicle is equipped with either the emissions control systems or devices that were originally a part of the motor vehicle or motor vehicle engine, or an alternate emissions control system or device, prior to offering to sell the motor vehicle; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Shelby Orme, (512) 239-4575; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: AustinSeventyOne, Limited; DOCKET NUMBER: 2017-1070-EAQ-E; IDENTIFIER: RN109690867; LOCATION: Austin, Travis County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §213.23(a)(1), by failing to obtain approval of a Contributing Zone Plan prior to commencing a regulated activity over the Edwards Aquifer; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Sandra Douglas, (512) 239-2549; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(3) COMPANY: Blattner Energy, Incorporated; DOCKET NUMBER: 2017-1471-WQ-E; IDENTIFIER: RN109447748; LOCATION: Big Lake, Reagan County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit; PENALTY: \$875; ENFORCEMENT COORDINATOR: Alex Laje, (512) 239-2547; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(4) COMPANY: City of Comanche; DOCKET NUMBER: 2017-0714-PWS-E; IDENTIFIER: RN101200962; LOCATION:

Comanche, Comanche County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.060 milligrams per liter for haloacetic acids, based on the locational running annual average; PENALTY: \$426; ENFORCEMENT COORDINATOR: James Boyle, (512) 239-2527; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: City of Kosse; DOCKET NUMBER: 2017-0769-MWD-E; IDENTIFIER: RN101919702; LOCATION: Kosse, Limestone County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011405001, Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 3, by failing to comply with permitted effluent limitations; PENALTY: \$18,562; Supplemental Environmental Project offset amount of \$14,850; ENFORCEMENT COORDINATOR: Caleb Olson, (512) 239-2541; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: City of La Grulla; DOCKET NUMBER: 2017-0255-PWS-E; IDENTIFIER: RN101417335; LOCATION: La Grulla, Starr County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.42(d)(11)(G), by failing to equip each filter installed after October 1, 2000, with facilities that allow the filter to be completely drained without removing other filters from service; 30 TAC §290.42(d)(11)(F)(vii), by failing to provide air scour backwash or surface wash facilities for filters installed after January 1, 1996; 30 TAC §290.45(b)(2)(B) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a treatment plant capacity of 0.6 gallon per minute (gpm) per connection; 30 TAC §290.45(b)(2)(A) and THSC, §341.0315(c), by failing to provide a raw water pump capacity of 0.6 gpm per connection with the largest pump out of service; 30 TAC §290.46(f)(2) and (3)(A)(iii), by failing to properly maintain water works operation and maintenance records and make them available for review to the executive director during the investigation; 30 TAC §290.42(e)(4)(C), by failing to provide adequate ventilation, which includes high level and floor level screened vents, for all enclosures in which gas chlorine is being stored or fed; 30 TAC §290.42(f)(1)(E)(ii)(I), by failing to provide adequate containment facilities for all liquid chemical storage tanks; 30 TAC §290.46(s)(1), by failing to calibrate the facility's two flow meters annually; 30 TAC §290.46(m)(4), by failing to maintain all distribution system lines, storage and pressure maintenance facilities, water treatment units, and all related appurtenances in a watertight condition; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and THSC, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; PENALTY: \$3,829; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(7) COMPANY: City of Lott; DOCKET NUMBER: 2017-1106-PWS-E; IDENTIFIER: RN102697786; LOCATION: Lott, Falls County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.060 milligrams per liter (mg/L) for haloacetic acids, based on the locational running annual average;

and 30 TAC §290.115(f)(1) and THSC, §341.0315(c), by failing to comply with the MCL of 0.080 mg/L for total trihalomethanes, based on the locational running annual average; PENALTY: \$345; ENFORCEMENT COORDINATOR: James Boyle, (512) 239-2527; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: Corey Steven Abel, Trustee of The Castlecomb Trust dba Castlecomb Water System; DOCKET NUMBER: 2016-2049-PWS-E; IDENTIFIER: RN104482013; LOCATION: Kerrville, Kerr County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(m)(4), by failing to maintain all distribution system lines, storage and pressure maintenance facilities, water treatment units, and all related appurtenances in a watertight condition; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.43(c)(2), by failing to ensure that the roof hatch remains locked except during inspections and maintenance; 30 TAC §290.42(m) and §290.43(e), by failing to provide an intruder-resistant fence that remains locked when the facility is unattended; 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; and 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; PENALTY: \$450; ENFORCEMENT COORDINATOR: James Fisher, (512) 239-2537; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(9) COMPANY: DCP Operating Company, LP; DOCKET NUMBER: 2017-1315-AIR-E; IDENTIFIER: RN100219047; LOCATION: Andrews, Andrews County; TYPE OF FACILITY: natural gas compressor station; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and §122.143(4), Federal Operating Permit (FOP) Number O2537, Special Terms and Conditions (STC) Number 2.F, and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification within 24 hours of discovery of an emissions event; and 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), FOP Number O1235, STC Number 6, New Source Review Permit Number 92352, Special Conditions Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$4,000; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(10) COMPANY: ESHAL ILF, INCORPORATED dba Amigo Food Market; DOCKET NUMBER: 2017-1029-PST-E; IDENTIFIER: RN101837151; LOCATION: Houston, Harris County; TYPE OF FACILITY: out-of-service underground storage tank (UST); RULES VIOLATED: 30 TAC §334.49(a)(2) and (c)(2)(C) and §334.54(c)(1) and TWC, §26.3475(d), by failing to ensure the corrosion protection system was operated and maintained in a manner that will ensure corrosion protection is continuously provided to the UST system; 30 TAC §334.49(c)(2)(C) and §334.54(c)(1), by failing to have cathodic protection inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; PENALTY: \$3,973; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: Fort Bend County Water Control and Improvement District Number 2; DOCKET NUMBER: 2017-0775-MWD-E; IDENTIFIER: RN102992872; LOCATION: Stafford, Fort Bend County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1),

and Texas Pollutant Discharge Elimination System Permit Number WQ0010086001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$28,125; Supplement Environmental Project offset amount of \$22,500; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: GREEN CREEK WATER SUPPLY CORPORATION; DOCKET NUMBER: 2017-1109-PWS-E; IDENTIFIER: RN101268688; LOCATION: Stephenville, Erath County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.121(a) and (b), and 30 TAC §290.45(f)(4) and (5) and Texas Health and Safety Code, §341.0315(c), by failing to provide a water purchase contract that authorizes a maximum daily purchase rate or a uniform purchase rate to meet a minimum production capacity of 0.6 gallon per minute (gpm) per connection and that authorizes a maximum hourly purchase rate plus the actual service pump capacity of at least 2.0 gpm per connection or provide at least 1,000 gpm and be able to meet peak hourly demands, whichever is less; 30 TAC §290.121(a) and (b), by failing to maintain a chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.46(z), by failing to create a nitrification action plan for systems distributing chloraminated water; 30 TAC §290.110(c)(5), by failing to conduct chloramine effectiveness sampling to sampling to ensure that monochloramine is the prevailing chloramine species and that nitrification is controlled; 30 TAC §290.46(f)(2) and (3)(B)(iv), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; PENALTY: \$539; ENFORCEMENT COORDINATOR: Ross Luedtke, (512) 239-3157; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: GREEN SPRINGS WATER SUPPLY CORPORATION; DOCKET NUMBER: 2017-0712-PWS-E; IDENTIFIER: RN101180792; LOCATION: Crossroads, Denton County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(A), (h), and (i)(1), by failing to collect lead and copper tap samples at the required 20 sample sites, have the samples analyzed, and report the results to the executive director (ED) for the January 1, 2016 - June 30, 2016 and the July 1, 2016 - December 31, 2016, monitoring periods; 30 TAC §290.117(c)(2)(B), (h), and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2015 - December 31, 2015, monitoring period; 30 TAC §290.117(c)(2)(C), (h), and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2012 - December 31, 2014, monitoring period; PENALTY: \$792; ENFORCEMENT COORDINATOR: James Boyle, (512) 239-2527; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: J.H. Strain and Sons, Incorporated; DOCKET NUMBER: 2017-1372-PST-E; IDENTIFIER: RN102432564; LOCATION: Tye, Taylor County; TYPE OF FACILITY: fleet refueling facility; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ Delivery Certificate prior to receiving fuel; PENALTY: \$875; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(15) COMPANY: Jeffrey L. Flanigan; DOCKET NUMBER: 2017-1388-WOC-E; IDENTIFIER: RN103616835; LOCATION: Parker, Collin County; TYPE OF FACILITY: occupational license;

RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: John Rodell dba West Cedar Creek Water System; DOCKET NUMBER: 2017-0980-PWS-E; IDENTIFIER: RN101225621; LOCATION: Buffalo, Leon County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A) and (f), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director (ED) each quarter by the tenth day of the month following the end of the quarter for the third and fourth quarters of 2016 and failing to provide public notification and submit a copy of the notification to the ED regarding the failure to submit a DLQOR for the third quarter of 2016; 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 for the January 1, 2014 - December 31, 2016, monitoring period, 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, 2014 - December 31, 2016, monitoring period; 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites that were tested, and failing to mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification has been distributed for the January 1, 2011 - December 31, 2013, monitoring period; 30 TAC §290.109(d)(4)(B) (formerly §290.109(c)(4)(B)) and §290.122(c)(2)(A) and (f), by failing to collect a raw groundwater source *Escherichia coli* (*E.Coli*) sample from the facility's one active source within 24 hours of notification of a distribution total coliform-positive result on a routine sample during the month of July 2016 and failing to provide public notification and submit a copy of the notification to the ED regarding the failure to collect a raw groundwater source *E.coli* sample during the month of July 2016; PENALTY: \$887; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(17) COMPANY: Judson Independent School District; DOCKET NUMBER: 2017-0799-MWD-E; IDENTIFIER: RN106851983; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0015141001, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$5,500; ENFORCEMENT COORDINATOR: James Boyle, (512) 239-2527; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(18) COMPANY: Lazarus Refining and Marketing, LLC; DOCKET NUMBER: 2017-1033-AIR-E; IDENTIFIER: RN105094031; LOCATION: Nixon, Wilson County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §116.115(c), New Source Review (NSR) Permit Number 81194, Special Conditions (SC) Number 10.D, and Texas Health and Safety Code (THSC), §382.085(b), by failing to install a flow monitor on the flare; and 30 TAC §116.115(c), NSR Permit Number 81194, SC Number 12.G, and THSC, §382.085(b), by failing to keep records of tank throughput for each tank; PENALTY: \$1,588; ENFORCEMENT COORDINATOR: Carol McGrath, (210)403-4063; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(19) COMPANY: LUCKY LADY OIL COMPANY; DOCKET NUMBER: 2017-1152-PST-E; IDENTIFIER: RN102497161; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to deposit a regulated substance into a regulated underground storage tank system that was not covered by a valid, current TCEQ delivery certificate; PENALTY: \$2,356; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Ranglers Group Incorporated; DOCKET NUMBER: 2017-0481-PST-E; IDENTIFIER: RN101568855; LOCATION: Stephenville, Erath 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 COORDINATOR: James Boyle, (512) 239-2527; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Ronald L. Hanselman, Jr.; DOCKET NUMBER: 2017-1389-WOC-E; IDENTIFIER: RV109275610; LOCATION: Cresson, Parker County; TYPE OF FACILITY: public waster supply; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: SBE ENTERPRISES, INCORPORATED dba Ekko Fuels and Oil; DOCKET NUMBER: 2017-1213-PST-E; IDENTIFIER: RN100533025; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months, and the vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; PENALTY: \$1,736; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(23) COMPANY: Scott Perdue; DOCKET NUMBER: 2017-1365-WOC-E; IDENTIFIER: RN109830349; LOCATION: Cresson, Parker County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: Shane Taylor and Conway Clary; DOCKET NUMBER: 2017-0635-PST-E; IDENTIFIER: RN102434362; LOCATION: Matador, Motley County; TYPE OF FACILITY: out-of-service underground storage tanks (USTs); RULES VIOLATED: 30 TAC §334.7(d)(1)(A) and (B) and (3), by failing to notify the agency of any change or addition within 30 days from the date of the occurrence of the change or addition, or within 30 days from the date on which the owner or operator first became aware of the change or addition; and 30 TAC §334.602(a) and §334.603(b), by failing to identify and designate for the UST facility at least one named individual for each class of operator - Class A, Class B, and Class C; PENALTY: \$2,250; ENFORCEMENT COORDINATOR: Steven Stump, (512) 239-1343; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(25) COMPANY: SHARDA CONVENIENCE STORE, INCORPORATED dba Sunrise Market 1; DOCKET NUMBER:

2016-1438-PST-E; IDENTIFIER: RN102358108; LOCATION: Rockport, Aransas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued 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; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 72 hours of discovery; 30 TAC §334.74, by failing to investigate a suspected release of regulated substance within 30 days of discovery; PENALTY: \$46,365; ENFORCEMENT COORDINATOR: Steven Stump, (512) 239-1343; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(26) COMPANY: The Methodist Hospital; DOCKET NUMBER: 2017-1038-AIR-E; IDENTIFIER: RN102962446; LOCATION: Houston, Harris County; TYPE OF FACILITY: hospital; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O3400, General Terms and Conditions (GTC), by failing to submit a Permit Compliance Certification within 30 days after the end of the certification period; and 30 TAC §122.143(4) and §122.145(2)(C), THSC, §382.085(b), and FOP Number O3400, GTC, by failing to submit a deviation report within 30 days after the end of the reporting period; PENALTY: \$7,126; Supplemental Environmental Project offset amount of \$5,701; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201704721

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 20, 2017



Enforcement Orders

An agreed order was adopted regarding CEMEX Construction Materials South, LLC, Docket No. 2016-0482-PWS-E on November 28, 2017, assessing \$750 in administrative penalties with \$150 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, 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 J & J'S PROPERTY INVESTMENT, LLC dba River Haven RV Resort, Docket No. 2016-1309-PWS-E on November 28, 2017, assessing \$905 in administrative penalties with \$181 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, 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 Harrington Environmental Services, LLC, Docket No. 2016-1333-MLM-E on November 28, 2017, assessing \$6,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge,

Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding AMR FINANCIALS, INC dba Sunny Food Mart, Docket No. 2017-0304-PST-E on November 28, 2017, assessing \$3,375 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Eric Grady, 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 JPN ENTERPRISE, LLC dba GSES Dry Clean Super Center, Docket No. 2017-0337-MLM-E on November 28, 2017, assessing \$4,612 in administrative penalties with \$922 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, 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 82L, LLC dba Tega Kid's Superplex, Docket No. 2017-0362-PWS-E on November 28, 2017, assessing \$450 in administrative penalties with \$450 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, 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 DONA PAOLA, LLC, Docket No. 2017-0499-PST-E on November 28, 2017, assessing \$6,984 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Eric Grady, 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 Lone Star Growers, L.P., Docket No. 2017-0528-WQ-E on November 28, 2017, assessing \$2,500 in administrative penalties with \$500 deferred. Information concerning any aspect of this order may be obtained by contacting Farhaudd Abbaszadeh, 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 COASTAL TRANSPORT CO., INC., Docket No. 2017-0548-PST-E on November 28, 2017, assessing \$3,105 in administrative penalties with \$621 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, 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 BA PROPERTIES MANAGEMENT, INC. dba Sunmart 421 and dba Sunmart 317, Docket No. 2017-0565-PST-E on November 28, 2017, assessing \$6,750 in administrative penalties with \$1,350 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, 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 Leander Independent School District, Docket No. 2017-0606-PST-E on November 28, 2017, assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding COASTAL TRANSPORT CO., INC., Docket No. 2017-0647-PST-E on November 28, 2017, assessing \$3,105 in administrative penalties with \$621 deferred. Information concerning any aspect of this order may be obtained

by contacting Jonathan Nguyen, 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 READY MIX, INC., Docket No. 2017-0679-WQ-E on November 28, 2017, assessing \$1,125 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jake Marx, 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 HB Estates Water Supply Corporation, Docket No. 2017-0684-PWS-E on November 28, 2017, assessing \$225 in administrative penalties with \$45 deferred. Information concerning any aspect of this order may be obtained by contacting Melissa Castro, 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 SCOTT MANUFACTURING, INC., Docket No. 2017-0723-PWS-E on November 28, 2017, assessing \$153 in administrative penalties with \$153 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, 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 Duval County Conservation and Reclamation District, Docket No. 2017-0732-PWS-E on November 28, 2017, assessing \$845 in administrative penalties with \$169 deferred. Information concerning any aspect of this order may be obtained by contacting Sarah Kim, 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 LRZ INVESTMENTS INC dba LRZ Corner Store, Docket No. 2017-0752-PST-E on November 28, 2017, assessing \$4,317 in administrative penalties with \$863 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, 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 THREE PAKS, INC. dba Three Way, Docket No. 2017-0754-PST-E on November 28, 2017, assessing \$2,813 in administrative penalties with \$562 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.

An agreed order was adopted regarding NORTH IH35 INVESTMENTS INCORPORATED, Docket No. 2017-0755-PWS-E on November 28, 2017, assessing \$1,018 in administrative penalties with \$203 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 SWWC Utilities, Inc., Docket No. 2017-0796-PWS-E on November 28, 2017, assessing \$250 in administrative penalties with \$50 deferred. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, 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 Enterprise Products Operating LLC, Docket No. 2017-0802-IWD-E on November 28, 2017, assessing \$1,300 in administrative penalties with \$260 deferred. Informa-

tion concerning any aspect of this order may be obtained by contacting Melissa Castro, 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 Roma, Docket No. 2017-0830-PWS-E on November 28, 2017, assessing \$1,251 in administrative penalties with \$250 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 HIREN BUSINESS INC. dba Fast N Go, Docket No. 2017-0851-PST-E on November 28, 2017, assessing \$3,504 in administrative penalties with \$700 deferred. Information concerning any aspect of this order may be obtained by contacting Jonathan Nguyen, 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 ZR CO, INC., Docket No. 2017-0876-PST-E on November 28, 2017, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Claudia Corrales, 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 OIL PURIFICATION SPECIALISTS, INC. dba OPS Fuel Service, Docket No. 2017-0919-PST-E on November 28, 2017, assessing \$1,233 in administrative penalties with \$246 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.

An agreed order was adopted regarding Bellville Independent School District, Docket No. 2017-0920-PST-E on November 28, 2017, assessing \$2,438 in administrative penalties with \$487 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 Sienna Shipyards, LLC, Docket No. 2017-0942-IHW-E on November 28, 2017, assessing \$1,250 in administrative penalties with \$250 deferred. Information concerning any aspect of this order may be obtained by contacting Melissa Castro, 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 E. S. WATER UTILITY CONSOLIDATORS INC., Docket No. 2017-0967-PWS-E on November 28, 2017, assessing \$756 in administrative penalties with \$151 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 Children's Medical Center of Dallas, Docket No. 2017-0978-PST-E on November 28, 2017, assessing \$2,438 in administrative penalties with \$487 deferred. Information concerning any aspect of this order may be obtained by contacting Melissa Castro, 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 Vishva, Inc. dba Pac N Go 906, Docket No. 2017-1046-PST-E on November 28, 2017, assess-

ing \$3,751 in administrative penalties with \$750 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, 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 Valeria Lynn Raub dba Cypress Gardens Mobile Home Subdivision, Docket No. 2017-1047-PWS-E on November 28, 2017, assessing \$305 in administrative penalties with \$61 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Hays, Ronnie B., Docket No. 2017-1231-WOC-E on November 28, 2017, assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201704862

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 29, 2017



Notice of Hearing

AURORA READYMIX CONCRETE, LLC

SOAH Docket No. 582-18-0679

TCEQ Docket No. 2017-1060-AIR

Proposed Permit No. 138224

APPLICATION.

Aurora ReadyMix Concrete, LLC, 1242 Ravenscourt Drive, Sugar Land, Texas 77498-2721, has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of Proposed Air Quality Permit Number 138224, which would authorize construction of a Concrete Batch Plant located at 5715 Schurmier Road, Houston, Harris County, Texas 77048. This application was submitted to the TCEQ on January 15, 2016. The proposed facility will emit the following air contaminants: particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less.

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 to issue the permit because it meets all rules and regulations. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the TCEQ central office, the TCEQ Houston regional office, and at the Johnson Public Library, 3517 Reed Road, Houston, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Houston Regional Office, 5425 Polk Street, Suite H, Houston, 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=29.607715&lng=-95.321438&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 preliminary hearing at:

10:00 a.m. - January 9, 2018

City of Houston - City Hall Annex Chamber 900 Bagby Street, Public Level, Houston, Texas 77002

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, allow an opportunity for settlement discussions, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding will be similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on September 25, 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 the Chapter 2001, Texas Government Code; Chapter 382, Texas Health and Safety Code; TCEQ rules including 30 Texas Administrative Code (TAC) Chapter 116, Subchapters A and B; 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 affected by the application in a way not common to 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.

MAILING LIST.

You may ask to be placed on a mailing list to obtain additional information on this application by sending a request to the Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION.

Public comments and requests must be submitted either electronically at www.tceq.texas.gov/goto/comments, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application, the permitting process, or the contested case hearing process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en Español, puede llamar al (800) 687-4040. General information regarding the TCEQ may be obtained electronically at <http://www.tceq.texas.gov>

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.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information regarding the TCEQ can be found at <http://www.tceq.texas.gov/>.

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.

Further information may also be obtained from Aurora ReadyMix Concrete, LLC at the address stated above or by calling Mr. Venkata Godasi, Graduate Engineer at (713) 974-2272.

TRD-201704853
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 29, 2017



Notice of Informational Meeting for an Air Quality Standard Permit for Permanent Rock and Concrete Crushers Proposed Air Quality Registration Number 148928

APPLICATION. Asphalt Inc., LLC, 11675 Jollyville Road Suite 150, Austin, Texas 78759-4108 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit, Registration Number 148928, which would authorize construction of a permanent rock crusher. The facility is proposed to be located at 10975 West Farm-to-Market Road 487, Florence, Williamson County, Texas 76527. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=30.84051&lng=-97.76366&zoom=13&type=r>. This application was submitted to the TCEQ on October 9, 2017. The executive director has determined the application was technically complete on October 20, 2017.

The executive director shall approve or deny the application not later than 30 days after the end of the public comment period, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Austin Regional Office, located at 12100 Park 35 Circle Bldg. A Rm 179, Austin, Texas 78753-1808, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday.

The TCEQ will conduct an informational meeting to answer questions and discuss the application. The meeting will be held:

Monday, December 4, 2017 at 7:00 p.m.

Sheraton Austin Georgetown Hotel & Conference Center

1101 Woodlawn Avenue

Georgetown, Texas 78628

INFORMATION. For more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. General information can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Asphalt Inc., LLC, 11675 Jollyville Road Suite 150, Austin, Texas 78759-4108, or by calling Mr. Eric Shelander, Environmental Specialist, Westward Environmental, Inc. at (830) 249-8284.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800)-RELAY-TX (TDD) at least one week prior to the meeting.

Issued: November 21, 2017

TRD-201704775
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 21, 2017



Stakeholder Meetings on Landscape Irrigation Backflow Assemblies

The Texas Commission on Environmental Quality (TCEQ or commission) will conduct stakeholder meetings to request input on changes to 30 Texas Administrative Code Chapter 344, Landscape Irrigation, Subchapter E, Backflow Prevention and Cross-Connections.

Stakeholder Meetings

January 9, 2018, at 6:00 p.m.

Texas Commission on Environmental Quality, Region 4
2309 Gravel Drive, Public Meeting Room
Fort Worth, Texas 76118

January 10, 2018, at 1:30 p.m.

Texas Commission on Environmental Quality, Region 5
2916 Teague Drive
Tyler, Texas 75701

January 11, 2018, at 6:00 p.m.

Magnolia Multi-Service Center
7027 Capitol Street
Houston, Texas 77011

January 16, 2018, at 1:30 p.m.

Tesoro Building
8700 Tesoro Drive, 1st Floor Conference Room
San Antonio, Texas 78217

January 17, 2018, at 1:30 p.m.

Texas Commission on Environmental Quality, Region 14
TAMUCC-NRC Building
6300 Ocean Drive
Corpus Christi, Texas 78412

January 18, 2018, at 6:00 p.m.

Harlingen Water Works Building
114 North L Street
Harlingen, Texas 78550

January 22, 2018, at 1:30 p.m.

El Paso Public Library
501 North Oregon Street
El Paso, Texas 79901

January 23, 2018, at 6:00 p.m.

Wolfforth Public Library Community Room

508 East Hwy 62/82
Wolfforth, Texas 79382

January 29, 2018, at 1:30 p.m.

Texas Commission on Environmental Quality, Region 11
12100 Park 35 Circle, Building E, Room 201S
Austin, Texas 78753

The webcast from the Austin meeting can be viewed at <http://www.texasadmin.com/tx/tceq/>.

Comments

Stakeholder comments may be submitted to Derek Baxter, Office of Legal Services, Texas Commission on Environmental Quality, MC 205, 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 stakeholder comments should reference Rule Project Number 2018-004-344-CE. The comment period closes on February 28, 2018. For additional information please contact Melissa Keller, Program Support Section, at (512) 239-1768 or the Program Support Section Main Line (512) 239-0400.

Please note that this is an opportunity to provide *informal* comments to staff prior to the formal rulemaking process. While staff will review all comments received, the TCEQ will not be formally responding to any informal comments. A formal rule public hearing and comment period will occur following rule proposal by the commission.

TRD-201704812

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 27, 2017

Texas Facilities Commission

Request for Proposals #303-9-20620

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety--Highway Patrol (DPS), announces the issuance of Request for Proposals (RFP) #303-9-20620 Hidalgo County. TFC seeks a five (5) or ten (10) year lease of approximately 8,990 square feet of office space in Hidalgo County, Texas.

The deadline for questions is December 18, 2017, and the deadline for proposals is January 8, 2018, at 3:00 p.m. The award date is February 15, 2018. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at <http://www.txsmartbuy.com/sp/303-9-20620>.

TRD-201704780

Kay Molina

General Counsel

Texas Facilities Commission

Filed: November 21, 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 November 6, 2017, to November 22, 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 website. The notice was published on the website on Friday, December 1, 2017. The public comment period for this project will close at 5:00 p.m. on Tuesday, January 2, 2018.

FEDERAL AGENCY ACTIONS:

Applicant: CEMEX

Location: The project site is located on the Houston Ship Channel, in Channelview, Harris County, Texas.

LATITUDE & LONGITUDE (NAD 83): 29.764003 -95.09083

Project Description: The applicant is requesting to extend period of time in which they are authorized to perform maintenance dredging at this location for a period of 10 years.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2007-01383. 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).

CMP Project No: 18-1047-F1

Applicant: Marian Maritime, LLC

Location: The project site is located on the Old River Cove portion of Sabine Lake, on Humble Island, near Port Arthur, in Orange County, Texas.

LATITUDE & LONGITUDE (NAD 83): 29.973831 -93.847308

Project Description: The applicant proposes to dredge approximately 15,281 cubic yards of material to facilitate the expansion of an existing commercial barge and push boat fleet operation. The material will be mechanically dredged waterward of the mean high tide (MHT) line of the Old River Cove to a depth of 10 feet below mean low tide (MLT) with a two-foot over-dredge along approximately 284 linear feet of shoreline. Extending waterward between 100 and 200 feet from the shore of Humble Island, the approximate 0.789-acre dredge footprint includes 0.774 acres of Section 10/404 Open Water of the Old River Cove and approximately 0.015 acres of herbaceous sub-tidal wetlands. The proposed dredge depth (10 feet) will open up into, and match existing bottom elevations of the south-adjacent Gulf Intracoastal Waterway (GIWW). The applicant proposes bi-annual maintenance dredging to maintain the project-required depth of 10 feet.

The applicant stated that the proposed action includes dredge impacts only. Dredged material will be evenly spread in existing adjacent uplands west of the project area along approximately 2.74 acres of applicant-owned land with appropriate best management practices deployed

to prevent sediments from returning to the GIWW. The applicant has stated that no fill material will be placed in wetlands and that no other jurisdictional wetlands or other special aquatic sites (including seagrass beds, oyster beds, tidal or mud flats) are proposed to be directly impacted by the project activities.

The upland area proposed for dredged material is directly adjacent to potential palustrine forested wetland areas and a navigable waterway. While the applicant has stated that best management practices will be utilized, there exists a probability of discharge of dredged material into these areas, which would require authorization under Section 404.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2017-00505. 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).

CMP Project No: 18-1067-F1

Applicant: Texas Department of Transportation--Houston District

Location: The project site is located on the Galveston Channel, at the eastern tip of Galveston Island, end of State Highway 87, in Galveston, Galveston County, Texas.

LATITUDE & LONGITUDE (NAD 83): 29.328963 -94.773504

Project Description: The applicant proposes to conduct the following improvements within the existing Galveston Ferry Terminal: (1) Remove 5 floating work docks and 35 piles from the existing facility; (2) Installation within these removal areas of 20 berthing monopoles equipped with donut fenders; and (3) Installation of a new 485-linear-foot new combination wall along the north side of the ferry landing.

The combination wall would be constructed of sheet pile and 48-inch outside diameter pipe pilings. The combination wall pipe pilings would be filled with sand, steel reinforcing bar, and concrete.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2016-00999. 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).

CMP Project No: 18-1066-F1

Applicant: Shell Oil Company

Location: The project site is located on and around the Boggy Basin portion in the Houston Ship Channel (HSC) in Deer Park, Harris County, Texas.

LATITUDE & LONGITUDE (NAD 83): 29.7322 -94.045641

Project Description: The applicant is requesting permission to consolidate and extend their maintenance dredging authorizations for their facility (USACE Permit Nos. SWG-1999-02522 (formerly 10243 (6)) and SWG-1993-00615 (formerly 19823)) on the HSC under one authorization with one expiration date. Both previous permits had a total acreage of 51.4 acres, all of which are located in open water, and were issued to the same applicant with the projects adjacent to each other. The applicant is also requesting authorization for placement of the dredged material into the privately-owned East and West Jones Placement Area (EWJPA) to this new authorization.

In addition, applicant is requesting to perform intermittent silt blade maintenance dredging to previously authorized depths in all three areas. The applicant has stated in their application that they would like to use silt-blading in order to avoid existing infrastructure associated with ongoing dockside operations and that the material involved must remain within their authorized dredge footprint.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-1999-02522. 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 §401 of the Clean Water Act.

CMP Project No: 18-1074-F1

Applicant: Skipjack Properties, LLC

Location: The project site is located on the Lower Laguna Madre, between West Swordfish Street and West Amberjack Street on South Padre Island, Cameron County, Texas

LATITUDE & LONGITUDE (NAD 83): 26.10438, -97.17028

Project Description: The applicant proposes: 1) The demolition of existing piers, docks, and boat ramps. 2) The construction of 89 boat slips and associated piers and docks. New docks and piers would be constructed with pre-fabricated aluminum framing with thru-flow composite decking, supported by 16-inch diameter composite pilings. Top elevation of new docks and piers would be approximately +2.0 feet above the mean low tide (MLT). 3) The installation of approximately 639 linear feet of new sheet pile bulkhead. The new bulkhead would be situated 2 feet in front (elevation +4.5 feet above MLT) of the existing bulkhead, which would remain in place. Aggregate backfill, approximately 600 cubic yards (cy), would be placed behind the new sheet pile bulkhead for support. 4) The installation of a new boat ramp. A temporary coffer dam would be used to install the

38-foot-wide by 65-foot-long boat ramp. Structural fill to construct the ramp will total approximately 75 cy, rock base will total approximately 60 cy, and concrete will measure approximately 80 cy. 5) Hydraulic and/or mechanical dredging to accommodate dock/boat ramp configuration and construction activities is proposed to a depth of -3.5 feet MLT (0.24-acre area; approximately 300 cy) plus advanced maintenance dredging to a depth of -4.5 MLT (0.43-acre area; approximately 300 cy). Mechanical dredging activities will include excavating material using an excavator located on land or a barge. Hydraulic dredging will include a suction dredge head connected by a cable to an excavator located on land or on a barge. 6) The dredged material would be either placed in a hopper barge, or would be deposited into dewatering boxes located on shore in upland areas. Dredge material placed in the hopper barge would be transported to a designated upland area located north of South Point Avenue and east of Industrial Drive in Port Isabel, Texas. The water would be pumped onto the upland site, and the excavated material would be removed from the hopper barge and placed on the upland site. Dredge material from the dewatering boxes would be transported via dump truck to the same upland site once dewatered (Permit Drawings, Sheets 30-31 of 31). 7) Oyster clumps that could not be avoided would be relocated (approximately 0.01 acre) to oyster habitat located south of the site. 8) The types of material being discharged into the waters of the United States and the amount of each type in cy includes: concrete 80 cy, crushed stone 60 cy, riprap 60 cy, aggregate 600 cy, and structural 75 cy.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-1992-01693. 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).

CMP Project No: 18-1080-F1

Applicant: Port of Corpus Christi Authority

Location: The project site is located on an approximate 49-acre tract (22 acres of land and 27 acres of open-water) along the Tule Lake Chan-

nel within the Port of Corpus Christi Inner Harbor at 4725 Joe Fulton International Trade Corridor, Corpus Christi, Nueces County, Texas.

LATITUDE & LONGITUDE (NAD 83): 27.821818, -97.450868

Project Description: The applicant proposes to construct and operate the proposed Public Oil Docks 20, 21, and 22 Project. The project consists of construction of a 40-foot by 40-foot barge dock, three new barge breasting dolphins, approximately 4,155 feet of steel sheet pile bulkhead, approximately 2,924 feet of elevated concrete wharf platform consisting of mooring bollards and dock fenders, and related infrastructure. The project would result in the removal and relocation of approximately 2.9 million cubic yards of material. Approximately 800,000 cubic yards of material located above the mean lower low water (MLLW) would be excavated to provide the area necessary to safely maneuver and berth incoming and outgoing vessels. Approximately 2.1 million cubic yards of material located below the MLLW would be dredged within an approximate 37-acre dredge footprint to obtain depths of -54 feet MLLW, plus a 4-foot advanced maintenance, and up to 2-foot allowable overdredge along the elevated concrete wharf platform, and depths of -16 feet MLLW, plus up to a 2-foot allowable overdredge adjacent to the proposed barge dock. Dredging would be accomplished by mechanical and hydraulic methods. Dredged and excavated material would be placed onsite and/or within existing upland confined dredged material placement areas (DMPA). Following dredging operations, approximately 15,000 cubic yards of slope stabilization material consisting of either rock riprap or articulated concrete block mats would be placed along the proposed bulkhead from -2 feet MLLW to -16 feet MLLW along the 3:1 dredge slope and will cover approximately 3.62 acres. The construction of the proposed project would result in unavoidable impacts to approximately 12.36 acres of waters of the U.S. (WOUS) consisting of 3.73 acres of E2EM wetlands, 2.13 acres of E2SS3 wetlands, 1.47 acres of E1UB pond, 4.16 acres of E2US area, 0.69 acre of open-water, and 0.18 acre of drainage ditch. Of that, 7.33 acres of unavoidable impacts to WOUS would result in the features conversion to open-water. A 10-year maintenance dredging program is also proposed for the area to be dredged. The purpose of the proposed project is to provide the necessary dock and berthing facilities to support vessel engagement with the loading, unloading, transportation, importing, and exporting of petroleum and other bulk products via waterborne commerce. Construction of the proposed project would provide the facilities necessary to integrate existing barge, rail, pipeline, and storage infrastructure to maximize product handling efficiencies

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2015-00404. 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 §401 of the Clean Water Act.

CMP Project No: 18-1081-F1

Applicant: City of Corpus Christi

Location: The project is located on Packery Channel from the Gulf end of the jetties to the Gulf

Intracoastal Waterway and the Gulf beach between Packery Channel and Viento Del Mar.

LATITUDE & LONGITUDE (NAD 83): 27.61377, -97.19818 (east dredging terminus); 27.63557, -97.23864 (west dredging terminus); 27.60066, -97.21026 (placement area)

Project Description: This Public Notice is for a re-issuance of an existing permit originally issued on July 19, 2011. The applicant proposes a 10-year maintenance dredging plan of approximately 18,500 linear feet (3.5 miles) of the Packery Channel. The dredging would be to a depth of -14 feet NAVD 88 (-13.5 feet MLLW) plus 2 feet allowable over depth within the outer reach of the 122-foot-wide channel section, and -7 feet NAVD 88 (-7.2 feet MLLW) plus 1 foot allowable over depth within the outer reach of the 80-foot-wide channel section. No changes from the original Federal project dimensions are proposed. Maintenance dredging would be conducted using hydraulic and/or mechanical methods from barges, and approximately 400,000 cubic yards of material will be dredged. Suitable beach-quality sand from the dredging activities will be placed along the Gulf beach between Packery Channel and Viento Del Mar, approximately 7,600 feet in length and a total of 90 acres. Nourishment of the beach would measure approximately 300 feet wide seaward of the existing seawall. If a cutterhead dredge is used, the dredge material will be transported to the Gulf beach through a temporary pipeline. If mechanical dredging is used, material will be placed in scows (barge vessels) and then the scows will be anchored offshore of the Gulf beach in deep water. The location of the scows offshore of the Gulf beach is unknown at this time. The material will then be transported from the scows onto the beach using a temporary pump-out station and pipeline.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2011-00159. 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 §401 of the Clean Water Act.

CMP Project No: 18-1082-F1

Applicant: Cabot Oil & Gas Corporation

Location: The project is located on Corpus Christi Bay, approximately 10.2 miles southeast of Downtown Corpus Christi, in Nueces County, Texas.

LATITUDE & LONGITUDE (NAD 83): 27.727351, -97.217216 (Segment 1); 27.715686, -97.177550 (Segment 2)

Project Description: The applicant proposes to cut, flush, cap and decommission-in-place approximately 521 feet of a horizontal directional drilled (HDD) pipeline bundle that crosses the Gulf Intracoastal Waterway (GIWW), and approximately 2,410 feet of a HDD pipeline bundle starting in State Tract 463 off the west coast of Mustang Island and terminating at an upland location on Mustang Island. The pipeline bundles that cross the GIWW are buried at a depth of -27 feet NGVW, with an overburden between 10 feet and 15 feet thick. The pipelines off Mustang Island are buried at a minimum depth of 5 feet below the mudline.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2008-00692. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899.

CMP Project No: 18-1083-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from Ms. Allison Buchtien, P.O. Box 12873, Austin, Texas 78711-2873, or via email at federal.consistency@glo.texas.gov. Comments should be sent to Ms. Buchtien at the above address or by email.

TRD-201704850

Anne L. Idsal
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: November 29, 2017



Notice of Derelict Vessels

OFFICIAL NOTICE TO VESSEL OWNER/OPERATOR

(Pursuant to §40.254, Tex. Nat. Res. Code)

This preliminary report and notice of violation was issued by Jimmy Martinez, Deputy Director, Oil Spill Prevention and Response Division (OSPR), Texas General Land Office, on 9/26/2017.

PRELIMINARY REPORT

Based on an investigation conducted by Texas General Land Office-Region 2 staff on 9/26/2017, the Commissioner of the General Land Office (GLO), has determined that an approximately 40 foot-long, Steel-Hull Sailboat vessel identified as GLO Tracking Number UCG-PUNTI-MER-170831-007 is in a wrecked, derelict and substantially dismantled condition without the consent of the commissioner. The vessel is located in Clear Lake near Hilton Hotel 29, 33, 27N, 95, 04, 29W. There is no vessel name, markings or identification numbers on the vessel; consequently, it is impossible to determine the vessel's owner of record.

The GLO determined that pursuant to OSPRA §40.254(b)(2)(B), that the vessel has intrinsic value. The Commissioner has further determined that, because of the vessel's condition and location, the vessel poses an unreasonable threat to public health, safety, and welfare.

Violation

YOU ARE HEREBY GIVEN NOTICE, pursuant to the provisions of §40.254 of the Texas Natural Resources Code, (OSPR) that you are in violation of OSPRA §40.108(a) that prohibits a person from leaving, abandoning, or maintaining any structure or vessel in or on coastal waters, on public or private lands, or at a public or private port or dock if the structure or vessel is in a wrecked, derelict, or substantially dismantled condition, and the Commissioner determines the vessel is involved in an actual or unauthorized discharge of oil, a threat to the public health, safety, and welfare, or a hazard to the environment or navigation. The Commissioner is authorized by OSPRA §40.108(b) to dispose of or contract for the disposal of any vessel described in §40.108(a).

Recommendation

The Commissioner recommends that the vessel be removed from Texas coastal waters and disposed of in accordance with OSPRA §40.108.

The owner or operator of this vessel can request a hearing to contest the violation and the removal and disposal of the vessel. If the owner or operator wants to request a hearing, a request in writing must be made within twenty (20) days of this notice being posted on the vessel. The request for a hearing must be sent to: Texas General Land Office, Oil Spill Prevention and Response Division, P.O. Box 12873, Austin, TX 78711. Failure to request a hearing may result in the removal and disposal of the vessel by the TGLO. If the TGLO removes and disposes of the vessel, the TGLO has authority under TNRC §40.108(b) to recover the costs of removal and disposal from the vessel's owner or operator. For additional information contact Brian Fisher at (512) 463-2613.

OFFICIAL NOTICE TO VESSEL OWNER/OPERATOR

(Pursuant to §40.254, Tex. Nat. Res. Code)

This preliminary report and notice of violation was issued by Jimmy Martinez, Deputy Director, Oil Spill Prevention and Response Division (OSPR), Texas General Land Office, on 9/4/2017.

PRELIMINARY REPORT

Based on an investigation conducted by Texas General Land Office-Region 2 staff on 9/4/2017, the Commissioner of the General Land Office (GLO), has determined that an approximately 40 foot-long, Steel-Hull Troller vessel identified as GLO Tracking Number UCG-Da1-170906-001 is in a wrecked, derelict and substantially dismantled condition without the consent of the commissioner. The vessel is located 29.450053, -94.989923, Dickinson Bayou, Galveston County. There is no vessel name, markings or identification numbers on the vessel; consequently, it is impossible to determine the vessel's owner of record.

The GLO determined that pursuant to OSPRA §40.254(b)(2)(B), that the vessel has intrinsic value. The Commissioner has further determined that, because of the vessel's condition and location, the vessel poses an unreasonable threat to public health, safety, and welfare.

Violation

YOU ARE HEREBY GIVEN NOTICE, pursuant to the provisions of §40.254 of the Texas Natural Resources Code, (OSPR) that you are in violation of OSPRA §40.108(a) that prohibits a person from leaving, abandoning, or maintaining any structure or vessel in or on coastal waters, on public or private lands, or at a public or private port or dock if the structure or vessel is in a wrecked, derelict, or substantially dismantled condition, and the Commissioner determines the vessel is involved in an actual or unauthorized discharge of oil, a threat to the public health, safety, and welfare, or a hazard to the environment or navigation. The Commissioner is authorized by OSPRA §40.108(b) to dispose of or contract for the disposal of any vessel described in §40.108(a).

Recommendation

The Commissioner recommends that the vessel be removed from Texas coastal waters and disposed of in accordance with OSPRA §40.108.

The owner or operator of this vessel can request a hearing to contest the violation and the removal and disposal of the vessel. If the owner or operator wants to request a hearing, a request in writing must be made within twenty (20) days of this notice being posted on the vessel. The request for a hearing must be sent to: Texas General Land Office, Oil Spill Prevention and Response Division, P.O. Box 12873, Austin, TX 78711. Failure to request a hearing may result in the removal and disposal of the vessel by the TGLO. If the TGLO removes and disposes of the vessel, the TGLO has authority under TNRC §40.108(b) to recover the costs of removal and disposal from the vessel's owner or operator. For additional information contact Brian Fisher at (512) 463-2613.

TRD-201704762
Anne L. Idsal
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: November 21, 2017



Department of State Health Services

Licensing Actions for Radioactive Materials

During the second half of October, 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
Lubbock	Methodist Children's Hospital dba Joe Arrington Cancer Center	L06900	Lubbock	00	10/31/17
Sugar Land	Yassir Sonbol M.D., P.A.	L06899	Sugar Land	00	10/30/17
Throughout TX	West Tex Wireline L.L.C.	L06898	Abilene	00	10/25/17
Throughout TX	Tri-Point Oil & Gas Production Systems L.L.C.	L06897	Kountze	00	10/23/17
Throughout TX	SQS NDT L.P.	L06896	Odessa	00	10/23/17

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
Anderson	National Oilwell Varco L.P.	L06094	Anderson	14	10/24/17
Austin	Central Texas Medical Specialists P.L.L.C. dba Austin Cancer Centers	L06618	Austin	14	10/19/17
Baytown	Chevron Phillips Chemical Company L.P.	L00962	Baytown	47	10/24/17
Beaumont	Christus Health Southeast Texas dba Christus Southeast Teas St. Elizabeth	L00269	Beaumont	123	10/17/17
Cleburne	Texas Health Harris Methodist Hospital Cleburne	L02039	Cleburne	48	10/25/17
Conroe	Adnan Afzal M.D., P.A. dba Healing Hearts	L06071	Conroe	13	10/26/17
Corpus Christi	Bay Area Healthcare Group Ltd. dba Corpus Christi Medical Center	L04723	Corpus Christi	60	10/18/17
Dallas	Medical City Dallas Hospital dba Medical City	L01976	Dallas	214	10/17/17

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Dallas	Texas Oncology P.A. dba Sammons Cancer Center	L04878	Dallas	60	10/16/17
Dallas	BTDI JV L.L.P.	L06580	Dallas	02	10/26/17
Duncanville	Afridi Heart Care P.A.	L06005	Duncanville	13	10/24/17
El Campo	West Wharton County Hospital District dba El Campo Memorial Hospital	L02664	El Campo	18	10/16/17
Fort Worth	Texas Health Harris Methodist Hospital Fort Worth	L01837	Fort Worth	155	10/31/17
Fort Worth	Baylor All Saints Medical Center dba Baylor Scott & White All Saints Medical Center – Fort Worth	L02212	Fort Worth	103	10/19/17
Fort Worth	Cook Children’s Medical Center	L04518	Fort Worth	32	10/30/17
Fort Worth	Tarrant County Cardiology	L04659	Fort Worth	26	10/17/17
Fort Worth	BTDI JV L.L.P. dba Touchstone Imaging Downtown Fort Worth PET	L06728	Fort Worth	08	10/26/17
Groesbeck	South Limestone Hospital District dba Limestone Medical Center	L05932	Groesbeck	07	10/24/17
Hillsboro	NHCI of Hillsboro Inc. dba Hill Regional Hospital	L01949	Hillsboro	37	10/24/17
Houston	Kelsey Seybold Clinic P.A.	L00391	Houston	76	10/24/17
Houston	Kelsey Seybold Clinic P.A.	L00391	Houston	77	10/31/17
Houston	The Methodist Hospital dba Houston Methodist	L00457	Houston	202	10/13/17
Houston	Baylor College of Medicine	L00680	Houston	124	10/26/17
Houston	Methodist Health Centers dba Houston Methodist Willowbrook Hospital	L05472	Houston	61	10/17/17
Houston	American Diagnostic Tech L.L.C.	L05514	Houston	127	10/18/17
Houston	Houston Cancer Institute P.A. dba Houston Diagnostics and PET/CT Center	L06193	Houston	04	10/24/17
Houston	Methodist Health Centers dba Houston Methodist Willowbrook Hospital	L06670	Houston	08	10/17/17
Houston	Micro Motion Inc. dba Roxar	L06760	Houston	05	10/24/17
Houston	Methodist Health Centers dba Houston Methodist West Hospital	L06806	Houston	01	10/31/17
Lubbock	Covenant Medical Center	L00483	Lubbock	159	10/26/17
Lufkin	Vivek Mangla M.D., P.C.	L06881	Lufkin	01	10/26/17
Mesquite	Prime Healthcare Services – Mesquite L.L.C. dba Dallas Regional Medical Center	L06726	Mesquite	03	10/27/17
Mount Pleasant	Titus County Memorial Hospital dba Titus Regional Medical Center	L02921	Mount Pleasant	50	10/18/17
Odessa	Ector County Hospital District dba Medical Center Hospital	L01223	Odessa	102	10/18/17
Pasadena	Oxy Vinyls L.P.	L02257	Pasadena	28	10/31/17
Point Comfort	Alcoa World Alumina L.L.C.	L05186	Point Comfort	17	10/25/17
Port Arthur	Motiva Enterprises L.L.C.	L05211	Port Arthur	19	10/24/17
San Angelo	Shannon Medical Center	L02174	San Angelo	74	10/31/17
San Angelo	Shannon Clinic	L04216	San Angelo	57	10/31/17
San Antonio	VHS San Antonio Partners L.L.C. dba Baptist Health System	L00455	San Antonio	247	10/30/17
San Antonio	Methodist Healthcare System of San Antonio Ltd., L.L.P.	L00594	San Antonio	367	10/30/17
Texas City	Marathon Petroleum Company L.L.C.	L04431	Texas City	35	10/16/17
The Woodlands	St. Luke’s Community Health Services dba St. Luke’s The Woodlands Hospital	L05763	The Woodlands	31	10/26/17

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Throughout TX	GSS Laboratories and Specialty Testing L.L.C.	L05994	Aledo	05	10/19/17
Throughout TX	Texas Department of Transportation	L00197	Austin	185	10/20/17
Throughout TX	Nondestructive & Visual Inspection L.L.C.	L06162	Carthage	23	10/20/17
Throughout TX	Numed Inc.	L02129	Denton	77	10/19/17
Throughout TX	T Smith Inspection and Testing L.L.C.	L05697	Fort Worth	22	10/30/17
Throughout TX	National Inspection Services L.L.C.	L05930	Fort Worth	41	10/31/17
Throughout TX	Allied International Emergency L.L.C.	L06394	Fort Worth	04	10/25/17
Throughout TX	Halliburton Energy Services Inc.	L02113	Houston	133	10/17/17
Throughout TX	The University of Texas Health Science Center at Houston	L02774	Houston	75	10/30/17
Throughout TX	HVJ Associates Inc.	L03813	Houston	60	10/18/17
Throughout TX	4A Inspection L.L.C.	L06716	Houston	02	10/31/17
Throughout TX	IHTS Inspection L.L.C.	L06844	Houston	02	10/17/17
Throughout TX	ARC Inspection Services L.L.C.	L06864	Krum	04	10/25/17
Throughout TX	CMT Engineering Inc. dba Pavetex	L06407	Lubbock	09	10/25/17
Throughout TX	Pavetex Engineering L.L.C. dba Pavetex	L06407	Lubbock	10	10/31/17
Throughout TX	CDK Perforating L.L.C. dba Nine Energy Service	L06616	Midland	04	10/18/17
Throughout TX	Shared Medical Services Inc.	L06142	Nacogdoches	22	10/25/17
Throughout TX	Tarleton State University dba Texas Institute for Applied Environmental Research	L06892	Stephenville	01	10/17/17
Throughout TX	Schlumberger Technology Corporation	L01833	Sugar Land	203	10/25/17
Throughout TX	Schlumberger Technology Corporation	L06303	Sugar Land	12	10/25/17
Throughout TX	Thermo Process Instruments L.P.	L06804	Sugar Land	05	10/25/17
Throughout TX	Braun Intertec Corporation	L06681	Tyler	07	10/19/17
Throughout TX	Pumpco Energy Services Inc.	L06507	Valley View	17	10/19/17
Webster	Clear Lake Regional Medical Center Inc.	L01680	Webster	99	10/17/17
Webster	David S. Hamer M.D., P.A. dba Southeast Houston Cardiology	L05364	Webster	13	10/19/17

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
Abilene	Cardinal Health 414 L.L.C. dba National Central Pharmacy	L04781	Abilene	40	10/20/17
Beaumont	Southeast Texas Cardiology Associates II L.L.P.	L05204	Beaumont	16	10/18/17
Beeville	Christus Spohn Health System Corporation dba Christus Spohn Hospital Beeville	L04510	Beeville	33	10/30/17
Childress	Childress County Hospital District dba Childress Regional Medical Center	L02784	Childress	32	10/27/17
Houston	Willowbrook Cardiovascular Associates P.A.	L05090	Houston	10	10/18/17
Houston	Lalitha Sunder M.D., P.A. dba Westside Cardiovascular Associates	L06084	Houston	01	10/25/17
Killeen	Metroplex Adventist Hospital Inc. dba Metroplex Hospital	L03185	Killeen	33	10/26/17
L04885	Odessa Regional Hospital L.P. dba Odessa Regional Medical Center	L04885	Odessa	15	10/18/17
L05017	Texas Oncology P.A. dba Longview Cancer Center	L05017	Longview	18	10/18/17
McAllen	McAllen Hospitals L.P. dba South Texas Health System	L04902	McAllen	26	10/30/17

RENEWAL OF LICENSES ISSUED (continued):

Pasadena	Celanese Ltd.	L01130	Pasadena	78	10/26/17
San Angelo	Cardiology Associates of West Texas	L06102	San Angelo	04	10/24/17
San Antonio	VHS San Antonio Partners L.L.C. dba Baptist Health System	L00455	San Antonio	246	10/18/17
San Antonio	The University of Texas Health Science Center at San Antonio	L01279	San Antonio	165	10/24/17
San Antonio	Methodist Healthcare System of San Antonio Ltd., L.L.P.	L05076	San Antonio	36	10/20/17

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
Conroe	Arif Abdullah M.D., P.A.	L06276	Conroe	05	10/16/17
El Paso	El Paso Heart Center	L04828	El Paso	21	10/19/17
Throughout TX	Streamline Production Systems Inc.	L06658	Kountze	04	10/31/17
Tomball	Tomball Texas Hospital Company L.L.C. dba Tomball Regional Medical Center	L06472	Tomball	12	10/20/17

TRD-201704722
Barbara L. Klein
Interim General Counsel
Department of State Health Services
Filed: November 20, 2017



Order Removing Naldemedine from Schedule II Substances

The Administrator of the Drug Enforcement Administration issued a final order removing the substance naldemedine and its salts from schedule II of the Controlled Substances Act effective September 29, 2017. This final order was published in the September 29, 2017 *Federal Register*, Volume 82, Number 188, pages 45436-45438. After taking into consideration the substance's abuse potential, legitimate medical use, and dependence liability, the Administrator has determined that naldemedine does not meet the requirements for inclusion in any schedule.

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 action was 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 naldemedine be removed from the Schedule II substances.

SCHEDULE II

Schedule II consists of:

-Schedule II substances, vegetable origin or chemical synthesis

The following substances, however produced, except those narcotic drugs listed in other schedules:

(1) Opium and opiate, and a salt, compound, derivative, or preparation of opium or opiate, other than thebaine-derived butorphanol,

*naldemedine, naloxegol, naloxone and its salts, naltrexone and its salts, and nalmefene and its salts, but including:

Changes to the schedules are marked with an asterisk (*).

TRD-201704782
Barbara L. Klein
Interim General Counsel
Department of State Health Services
Filed: November 22, 2017



Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates for the Residential Care Program, Assisted Living Services, and Personal Care 3 Services

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on January 3, 2018, at 9:00 a.m., to receive comment on proposed Medicaid payment rates for the Residential Care (RC) Program, Assisted Living (AL) services, and Personal Care 3 (PC3) services. The proposed rates for the RC program will be utilized in the fee-for-service payment model and the proposed rates for AL and PC3 services will be utilized in the calculation of the STAR+PLUS managed care capitation rates for the Home and Community-Based Services risk group.

The public hearing will be held in the Public Hearing Room of the Brown-Heatly Building located at 4900 N. Lamar Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Lamar Boulevard. HHSC will also broadcast the public hearing; the broadcast can be accessed at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>. 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. HHSC proposes to decrease the Service Support cost component for the RC program and for AL and PC3 services to reflect the most recent increase in federal Supplemental Security Income (SSI) payments in accordance with the rate-setting methodologies below. The methodologies require that when SSI increases, the per diem reimbursement decreases in an amount equal to the increase in SSI received by clients. The payment rates are proposed to be effective February 1, 2018.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

- §355.509(c)(2), which addresses the reimbursement methodology for the RC program;

- §355.503(c)(2)(B), which addresses the reimbursement methodology for AL services; and

- §355.503(c)(2)(D), which addresses the reimbursement methodology for PC3 services.

Briefing Package. A briefing package describing the proposed payment rates will be available at <http://rad.hhs.texas.gov/rate-packets> on or after December 15, 2017. Interested parties may obtain a copy of the briefing package before the hearing by contacting the HHSC Rate Analysis Department by telephone at (512) 730-7401; by fax at (512) 730-7475; or by email at RAD-LTSS@hpsc.state.tx.us. The briefing package will also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Rate Analysis Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by email to RAD-LTSS@hpsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to the Texas Health and Human Services Commission, Rate Analysis Department, Mail Code H-400, Brown-Healy Building, 4900 North Lamar Boulevard, Austin, Texas 78751-2316.

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-201704845

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: November 28, 2017

Texas Department of Housing and Community Affairs

Correction of Error

The Texas Department of Housing and Community Affairs published proposed amendments to 10 TAC §80.41 in the October 6, 2017, issue of the *Texas Register* (42 TexReg 5300). Due to a *Texas Register* editing error, the text for paragraphs (4), (5), (7) and (8) of subsection (c) included periods instead of apostrophes in some words. The text should have read as follows:

(c) Education.

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

(4) All related persons added to a retailer's license are required to take the initial eight (8) hour course of instruction in the law, including instruction in consumer protection regulations and the four (4) hour retailer education course prior to being added to the retailer's license.

(5) All related persons added to an installer's license are required to take the initial eight (8) hour course of instruction in the law, including instruction in consumer protection regulations and the four (4) hour installer education course prior to being added to the installer's license.

(6) All related persons added to a retailer/installer license or retailer/installer/broker license are required to take the initial eight (8) hour course of instruction in the law, including instruction in consumer protection regulations; the four (4) hour retailer education course; and the four (4) hour installer education course prior to being added to the license.

(7) All related persons added to a manufacturer's license are required to take the initial eight (8) hour course of instruction in the law, including instruction in consumer protection regulations prior to being added to the manufacturer's license.

(8) All related persons added to a broker's license are required to take the initial eight (8) hour course of instruction in the law, including instruction in consumer protection regulations prior to being added to the broker's license.

TRD-201704759

University of Houston System

Notice of Request for Proposal

The University of Houston System announces a Request for Proposal (RFP) for consultant services pursuant to Government Code, Chapter 2254, Subchapter B.

RFP783-18006, Compensation Consulting

Purpose:

The University of Houston is seeking a compensation consulting firm that has a strong understanding of higher education Total Rewards. The company should have knowledge of current and trending compensation practices and market competitiveness in the Houston and Texas markets as well as higher education and general industries.

Eligible Applicants:

Consulting firms with knowledge and experience in the compensation markets and how it relates to a State of Texas university and its demographics.

Services to be performed including assisting the University of Houston System with:

- Assess current compensation philosophy and make recommendations for improvement;

- Determine appropriate market groups for the University of Houston;

- Conduct market review of active job codes;

- Determine appropriate FLSA classification of exempt and non-exempt jobs;

- Propose new salary structure(s);

- Review and recommend pay policy revisions;

- Propose pay recommendations for current employee population impacted by market.

Finding by Chief Executive Officer, Renu Khator:

After reviewing and discussing this matter with the staff, a consultant is needed to review the compensation function and ensure that the University has the most efficient and functional operation possible. The University believes that using a third-party consultant, who has provided similar services for large and complex organizations in similar context and size to the University of Houston, will provide the greatest benefit. The expertise needed for this consultation is complex and requires a comprehensive knowledge of best business practices, available technology specific to the field, and state and federal regulations to ensure effective compensation functionality. Currently, our Compensation Department does not possess the expertise needed to conduct such a review in-house. Thus, it is necessary for the University to engage a consultant to provide these services.

Review and Award Criteria:

All proposals will be evaluated by appointed representatives of the University in accordance with the following procedures:

1. Purchasing will receive and review each RFP proposal to ensure it meets the requirements of the RFP. Qualified proposals will be given to the selection committee.
2. Each member of the selection committee will independently evaluate the qualified proposals according to the criteria in section IX of the RFP, except for price, and send their evaluations to Purchasing. Price will be evaluated by the Project Manager.
3. Purchasing will combine the committee's scores to determine which proposal received the highest combined score.
4. Purchasing will notify the respondent with the highest score that the University intends to contract with them.

Deadlines: University will accept proposals until Thursday, January 11, 2018 at 2:00 p.m. CDT and the HSP on Friday, January 12, 2018 at 2:00 p.m. CDT with both submitted in separate envelopes and then opened on the HSP due date and time.

Obtaining a copy of the RFP: Copies will be available on the Electronic State Business Daily (ESBD) at <http://esbd.cpa.state.tx.us/>.

The sole point of contact for inquiries concerning RFP is:

Jack Tenner

UH Purchasing

5000 Gulf Freeway, ERP 1, Rm. 204

Houston, Texas 77204-5015

Phone: (713)743-5671

Email: jdtenner@central.uh.edu

TRD-201704793

Jackie D. Tenner

Director of Purchasing

University of Houston System

Filed: November 27, 2017

Texas Department of Insurance

Company Licensing

Application for ACE SEGUROS, S.A., an alien fire and/or casualty company, to change its name to CHUBB SEGUROS MEXICO, S.A.. The home office is in Mexico City, Mexico.

Application for TEXAS AG COOP TRUST, a foreign Multiple Employer Welfare Arrangement (MEWA), to change its name to AGBENEFITS. The home office is in Amarillo, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Jeff Hunt, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201704856

Norma Garcia

General Counsel

Texas Department of Insurance

Filed: November 29, 2017

Texas Department of Licensing and Regulation

Notice of Vacancies on the Advisory Board on Barbering

The Texas Department of Licensing and Regulation (Department) announces two vacancies on the Advisory Board on Barbering (Board) established by Texas Occupations Code, Chapter 1601. The pertinent rules may be found in 16 TAC §82.65. The purpose of the Advisory Board on Barbering is to advise the Texas Commission of Licensing and Regulation (Commission) and the Department on: education and curricula for applicants; the content of examinations; proposed rules and standards on technical issues related to barbering; and other issues affecting barbering. This announcement is for **two members who are barbershop owners and hold barbershop permits**.

The Board is composed of five members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of:

- (1) two members who are engaged in the practice of barbering as a Class A barber and do not hold a barbershop permit;
- (2) two members who are barbershop owners and hold barbershop permits; and
- (3) one member who holds a permit to conduct or operate a barber school.

Members serve staggered six-year terms, with the terms of one or two members expiring on the same date each odd-numbered year.

Interested persons should submit an application on the Department website at: <https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx>. Applicants can also request an application from the Department by telephone (800) 803-9202, fax (512) 475-2874 or e-mail advisory.boards@tdlr.texas.gov. **This is not a paid position and there is no compensation or reimbursement for serving on the board.**

TRD-201704860

Brian Francis

Executive Director

Texas Department of Licensing and Regulation

Filed: November 29, 2017

Notice of Vacancy on the Advisory Board on Cosmetology

The Texas Department of Licensing and Regulation (Department) announces one vacancy on the Advisory Board on Cosmetology (Board) established by Texas Occupations Code, Chapter 1602. The pertinent rules may be found in 16 TAC §83.65. The purpose of the Advisory Board on Cosmetology is to advise the Texas Commission of Licensing and Regulation (Commission) and Department on: education and cur-

ricula for applicants; the content of examinations; proposed rules and standards on technical issues related to cosmetology; and other issues affecting cosmetology. **This announcement is for one member who holds a private beauty culture school license.**

The Board is composed of the following nine members appointed by the presiding officer of the Commission, with the Commission's approval:

- (1) one member who holds a license for a beauty shop that is part of a chain of beauty shops;
- (2) one member who holds a license for a beauty shop that is not part of a chain of beauty shops;
- (3) one member who holds a private beauty culture school license;
- (4) two members who each hold an operator license;
- (5) one member who represents a licensed public secondary or post secondary beauty culture school;
- (6) one member who represents a licensed public secondary beauty culture school; and
- (7) two public members.

Members serve staggered six-year terms, with the terms of one or two members expiring on the same date each odd-numbered year.

Interested persons should submit an application on the Department website at: <https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx>. Applicants can also request an application from the Department by telephone (800) 803-9202 or email advisory.boards@tdlr.texas.gov. **This is not a paid position and there is no compensation or reimbursement for serving on the board.**

TRD-201704861
Brian Francis
Executive Director
Texas Department of Licensing and Regulation

Filed: November 29, 2017

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Texas Lottery Commission

Scratch Ticket Game Number 2015 "2X Cash"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2015 is "2X CASH". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2015 shall be \$2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2015.

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, 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, 2X SYMBOL, \$2.00, \$5.00, \$10.00, \$20.00, \$30.00, \$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. 2015 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
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
2X SYMBOL	DBL
\$2.00	TWOS\$
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$30.00	TRTY\$
\$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 (2015), 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: 2015-0000001-001.

H. Pack - A Pack of "2X CASH" Scratch Ticket Games contains 125 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 125 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 125 will be shown on the back of the Pack.

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 "2X CASH" Scratch Ticket Game No. 2015.

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 "2X CASH" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 24 (twenty-four) Play Symbols. If a player's YOUR NUMBER Play Symbol matches the WINNING NUMBER Play Symbol in the same ROW across, the player wins the PRIZE for that ROW. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the PRIZE for that ROW. 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 24 (twenty-four) 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 24 (twenty-four) 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 24 (twenty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 24 (twenty-four) 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. Consecutive Non-Winning Tickets within a Pack will not have matching patterns of either Play Symbols or Prize Symbols.

- B. A Ticket will win as indicated by the prize structure.
- C. A Ticket can win up to eight (8) times.
- D. On winning and Non-Winning Tickets, the top cash prizes of \$1,000 and \$30,000 will each appear at least once, except on Tickets winning seven (7) times or more.
- E. A non-winning Prize Symbol will not match a winning Prize Symbol on a Ticket.
- F. On all Tickets, a Prize Symbol will not appear more than three (3) times, except as required by the prize structure to create multiple wins.
- G. No matching YOUR NUMBER Play Symbols will appear on a Ticket.
- H. No matching WINNING NUMBER Play Symbols will appear on a Ticket.
- I. On all Tickets, A WINNING NUMBER Play Symbol will not match a YOUR NUMBER Play Symbol from a different ROW.
- J. YOUR NUMBER Play Symbols will never equal the corresponding Prize Symbol (i.e., 2 and \$2, 5 and \$5, 10 and \$10, 20 and \$20, 30 and \$30).
- K. The "2X" (DBL) Play Symbol will never appear as a WINNING NUMBER Play Symbol.
- L. The "2X" (DBL) Play Symbol will never appear on a Non-Winning Ticket.
- M. The "2X" (DBL) Play Symbol will win DOUBLE the PRIZE for that ROW.
- N. The "2X" (DBL) Play Symbol will never appear more than once on a winning Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "2X CASH" Scratch Ticket Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$30.00, \$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 \$30.00, \$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 "2X 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 "2X 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 "2X 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 "2X 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. 2015. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2015 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$2	835,200	8.62
\$4	384,000	18.75
\$5	172,800	41.67
\$10	57,600	125.00
\$20	153,600	46.88
\$30	17,250	417.39
\$50	6,480	1,111.11
\$100	6,000	1,200.00
\$1,000	20	360,000.00
\$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. 2015 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. 2015, 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-201704851

Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: November 29, 2017



Scratch Ticket Game Number 2023 "Dazzling Dollars X9"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2023 is "DAZZLING DOLLARS X9". The play style is "slots - straight line".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2023 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2023.

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: \$5.00, \$10.00, \$15.00, \$30.00, \$60.00, \$90.00, \$500, \$1,000, \$10,000, \$100,000, STAR SYMBOL, HORSESHOE SYMBOL, COOKIE SYMBOL, COIN SYMBOL, JOKER SYMBOL, KEY SYMBOL, SEVEN SYMBOL, MONEY BAG SYMBOL, CHERRY SYMBOL, WISHBONE SYMBOL, CROWN SYMBOL, HEART SYMBOL,

DIAMOND SYMBOL, BELL SYMBOL, LEMON SYMBOL, BANANA SYMBOL, MELON SYMBOL, APPLE SYMBOL, GRAPE SYMBOL, PLUM SYMBOL and GOLD BAR SYMBOL.

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. 2023 - 1.2D

PLAY SYMBOL	CAPTION
\$5.00	FIV\$
\$10.00	TEN\$
\$15.00	FFN\$
\$30.00	TRTY\$
\$60.00	SXTY\$
\$90.00	NITY\$
\$500	FVHN
\$1,000	ONTH
\$10,000	10TH
\$100,000	100TH
STAR SYMBOL	STAR
HORSESHOE SYMBOL	HRSHOE
COOKIE SYMBOL	COOKIE
COIN SYMBOL	COIN
JOKER SYMBOL	JOKER
KEY SYMBOL	KEY
SEVEN SYMBOL	SEVN
MONEY BAG SYMBOL	MNBAG
CHERRY SYMBOL	CHRY
WISHBONE SYMBOL	BONE
CROWN SYMBOL	CROWN
HEART SYMBOL	HEART
DIAMOND SYMBOL	DIMND
BELL SYMBOL	BELL
LEMON SYMBOL	LEMN
BANANA SYMBOL	BNNA
MELON SYMBOL	MELN
APPLE SYMBOL	APPL
GRAPE SYMBOL	GRPE
PLUM SYMBOL	PLUM
GOLD BAR SYMBOL	GLDBAR

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-Scratch Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2023), 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: 2023-0000001-001.

H. Pack - A Pack of the "DAZZLING DOLLARS X9" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 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 075 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 "DAZZLING DOLLARS X9" Scratch Ticket Game No. 2023.

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 "DAZZLING DOLLARS X9" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 80 (eighty) Play Symbols. If a player reveals 3 matching Play Symbols in the same GAME, the player wins the PRIZE for that GAME. If a player reveals a "GOLD BAR" Play Symbol in any GAME, the player wins 3X the PRIZE for that GAME. If a player reveals 2 "GOLD BAR" Play Symbols in the same GAME, the player wins 6X the PRIZE for that GAME. If a player reveals 3 "GOLD BAR" Play Symbols in the same GAME, the player wins 9X the PRIZE for that GAME. 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 80 (eighty) 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 80 (eighty) 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 80 (eighty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 80 (eighty) 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. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

B. Consecutive Non-Winning Tickets in a Pack will not have matching play data, spot for spot.

C. A Ticket may have up to four (4) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

D. A Ticket may have up to six (6) matching non-winning Play Symbols, unless restricted by other parameters, play action or prize structure.

E. There will be no matching non-winning GAMES in any order.

F. The "GOLDBAR" (GLDBAR) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

G. A non-winning Prize Symbol will never be the same as a winning Prize Symbol on a Ticket.

H. Vertically adjacent winning GAMES will not have matching winning Play Symbols.

I. Non-Winning Tickets will have at least four (4), but no more than eight (8), matching Play Symbols in the first and second positions of a GAME.

J. A winning GAME using one (1) "GOLDBAR" (GLDBAR) Play Symbol will include a pair of matching Play Symbols in the same GAME.

K. There will be no occurrence of three (3) matching Play Symbols in any adjacent vertical or diagonal row.

2.3 Procedure for Claiming Prizes.

A. To claim a "DAZZLING DOLLARS X9" Scratch Ticket Game prize of \$5.00, \$10.00, \$15.00, \$30.00, \$60.00, \$90.00 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 \$30.00, \$60.00, \$90.00 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 "DAZZLING DOLLARS X9" Scratch Ticket Game prize of \$1,000, \$10,000 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 \$800 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 "DAZZLING DOLLARS X9" 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 16800, Austin, Texas 78761-6800. 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 \$800 from the "DAZZLING DOLLARS X9" 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 \$800 or more from the "DAZZLING DOLLARS X9" 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 7,080,000 Scratch Tickets in Scratch Ticket Game No. 2023. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2023 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5	755,200	9.38
\$10	566,400	12.50
\$15	283,200	25.00
\$30	88,500	80.00
\$60	39,294	180.18
\$90	25,075	282.35
\$500	3,540	2,000.00
\$1,000	413	17,142.86
\$10,000	20	354,000.00
\$100,000	8	885,000.00

*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 4.02. 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. 2023 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. 2023, 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-201704852
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: November 29, 2017

Request for Proposals for Quantifying the Benefits of Non-Regulatory Mitigation

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from interested parties to gather information and data identifying the value of ecosystem services generated by non-regulatory mitigation for impacts from transportation projects. The information and data will be used in an NCTCOG-developed tool that will allow political subdivisions in the Metropolitan Planning Area to: quantify the environmental benefits, including economic return-on-investment, of ecosystem services associated with non-regulatory mitigation of impacts generated by transportation projects and programs; plan which non-regulatory mitigation activities are appropriate for the scope and scale of future transportation projects, including transportation-related stormwater projects; and make better planning decisions about non-regulatory mitigation activities and locations to best protect and enhance the environment.

Proposals must be received no later than 5:00 p.m. Central Time, on Friday, January 12, 2018, to Kate Zielke, Senior Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. The full RFP, including selection criteria and other desired elements, will be available at www.nctcog.org/rfp by the close of business on Friday, December 8, 2017.

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North Central Texas Council of Governments

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-201704842

R. Michael Eastland
Executive Director

North Central Texas Council of Governments
Filed: November 28, 2017



Request for Proposals for Video Web Hosting Service and Equipment/Maintenance

The North Central Texas Council of Governments (NCTCOG) is seeking proposals from providers of video web hosting services and equipment for various regularly scheduled meetings. It is the intent of this Request for Proposals (RFP) to have the successful firm enter into a Professional Services Contract with NCTCOG.

Proposals must be received no later than 5:00 p.m. Central Time, on Friday, January 5, 2018, to Michael Bort, Technology Support Coordinator, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. Copies of the RFP will be available at www.nctcog.org/rfp by the close of business on Friday, December 1, 2017.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-201704707

R. Michael Eastland
Executive Director

North Central Texas Council of Governments
Filed: November 20, 2017



Office of Public Utility Counsel

Notice of Annual Public Hearing

Pursuant to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §13.064, the Office of Public Utility Counsel (OPUC) will conduct its annual public hearing.

The public hearing will be held on the date, time, and location indicated below.

Monday, December 11, 2017, at 11:00 a.m.

William B. Travis Building

Conference Room #1-111

1701 N. Congress Avenue

Austin, Texas 78701

OPUC represents the interests of residential and small commercial consumers, as a class, in electric, telecommunications and water and wastewater proceedings before the Public Utility Commission, Electric Reliability Council of Texas, and state and federal courts. OPUC seeks public input on its priorities for the coming year.

All interested persons are invited to attend and provide input.

For further information contact Michele Gregg, P.O. Box 12397, Austin, Texas 78711-2397 or (512) 936-7500 or (877) 839-0363 or email: opuc_customer@opuc.texas.gov.

TRD-201704859

Tonya Baer

Public Counsel

Office of Public Utility Counsel

Filed: November 29, 2017



Public Utility Commission of Texas

Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 22, 2017, under the Public Utility Regulatory Act, Tex. Util. Code Ann. §39.154 and §39.158.

Docket Style and Number: Application of Luminant Power Generation Company LLC, Big Brown Power Company LLC, Comanche Peak Power Company LLC, La Frontera Holdings, LLC, Oak Grove Management Company LLC, and Sandow Power Company LLC under Public Utility Regulatory Act §39.158, Docket Number 47801.

The Application: On November 22, 2017, Luminant Power Generation Company LLC, Big Brown Power Company LLC, Comanche Peak Power Company LLC, La Frontera Holdings, LLC, Oak Grove Management Company LLC, and Sandow Power Company LLC, filed an application for approval of the proposed merger of Dynegy Inc. with and into their ultimate parent company, Vistra Energy Corp., with Vistra being the surviving corporation. Following the proposed purchase, the combined generation owned and controlled by applicants and Dynegy, and their respective affiliates will not exceed 20% of the total electricity offered for sale in ERCOT.

Persons wishing to intervene or comment on the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 47801.

TRD-201704849

Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 28, 2017



Notice of Application to Amend a Service Provider Certificate of Operating Authority

On November 20, 2017, an application was filed with the Public Utility Commission of Texas (commission) to amend a service provider certificate of operating authority.

Docket Style and Number: Application of Network Billing Systems, LLC to Amend its Service Provider Certificate of Operating Authority, Docket No. 47789.

Application: Network Billing Systems, LLC filed an application to amend service provider certificate of operating authority number 60557 to reflect a change in ownership and control. As a result of this amendment, approximately 75% of the indirect equity interests of Network Billing Systems, LLC will be acquired by BCHI Holdings, LLC and ultimately held by Birch Communications Holdings, Inc.'s shareholders. The remaining 25% equity interest in Network Billing Systems, LLC will be held by the Fusion Telecommunications International, Inc.'s stockholders.

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 December 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 47789.

TRD-201704785
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 27, 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) on November 20, 2017, to amend a water certificate of convenience and necessity (CCN) in Williamson County.

Docket Style and Number: Application of the City of Hutto to Amend a Water Certificate of Convenience and Necessity in Williamson County, Docket Number 47795.

The Application: The City of Hutto filed an application to amend water CCN No. 20122 in Williamson County to add service area. The total area being requested includes approximately 15,648 acres and no current 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 47795.

TRD-201704814
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 27, 2017



Texas Department of Transportation

Request for Information - Toll Operations Division

The Texas Department of Transportation (TxDOT) is seeking industry comment on the proposed scope of work for a Customer Service Center supporting the agency's toll operations.

For this Request for Information (RFI), TxDOT seeks general comments about, and a critique of, the scope of work presented and the extent to which it is compatible with the types of services normally provided by vendors engaged in Customer Service and Call Center operations. TxDOT is not seeking proposals to provide the services, but rather confirmation that the scope of work as presented conforms to industry norms. Given the nature of this RFI, comments, recommendations and suggested revisions to the scope of work may be submitted in any written form to the Point of Contact below.

This RFI does not constitute a Request for Qualifications, a Request for Proposals, a Request for Offers or other solicitation document, nor does it represent an intention to conduct a solicitation. This RFI does

not commit TxDOT to contract for any supply or service, nor will any response to this RFI be considered in the evaluation of any response to a solicitation document. TxDOT will not pay for any information or administrative cost incurred in response to this RFI.

RFI Issuance Date: December 8, 2017

RFI Response Deadline: January 15, 2018 at 3:00 p.m. CST

RFI Website and Addenda: Additional information regarding the RFI, including the proposed scope of work, may be found on the RFI website at:

<https://www.txdot.gov/business/opportunities.html>

TxDOT will post any addenda to the RFI on the RFI website. At its option, TxDOT may elect to follow-up directly with respondents with more detailed questions or to clarify submissions.

Questions: Questions regarding this RFI should be submitted in writing to the Point of Contact at the email address listed below. TxDOT will post responses to questions on the RFI website without identifying the party(ies) submitting the questions. Respondents are encouraged to submit questions prior to January 11, 2018.

Contracting Office Address:

Texas Department of Transportation - Toll Operations Division
12719 Burnet Road
Austin, TX 78727

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TRD-201704816
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: November 28, 2017



Request for Proposal - Private Consultant Services

The Texas Department of Transportation (TxDOT) announces a Request for Proposal (RFP) for private consultant services pursuant to Government Code, Chapter 2254, Subchapter B. The term of the contract will be from project initiation to March 31, 2020. TxDOT will administer the contract. The RFP will be released on December 8, 2017, and is contingent on the finding of necessity from the Governor's Office.

Purpose: This solicitation is to provide insurance advisory services to assist TxDOT in evaluating and determining the appropriate types and levels of insurance coverage required in connection with the development, financing, construction, operation, and maintenance of TxDOT transportation projects using alternative delivery methods. Alternative delivery methods are delivery methods other than the design-bid-build delivery method, and include, but are not limited to, Comprehensive Development Agreements (CDA) and Design-Build Contracts (DB). Under these agreements, the private developer or contractor is responsible for project work that is the responsibility of TxDOT under the design-bid-build delivery method, and project design and construction risks and responsibilities are allocated between the private developer or contractor and TxDOT, including project cost and schedule risk. The

amount of level of effort will vary per project, and multiple projects may run in parallel. Additionally, the selected firm may advise TxDOT in the procurement of Directors & Officers Liability Insurance policies.

Eligible Applicants: Eligible applicants include, but are not limited to, organizations that provide insurance advisory services.

Program Goal: To obtain independent and specialized advice, assistance, and support to provide TxDOT the expertise to mitigate insurance risk by evaluating and determining the appropriate types and levels of insurance coverage on transportation projects which use alternative delivery methods.

Review and Award Criteria: Each proposal will first be screened for completeness and timeliness. Proposals that are deemed incomplete or arrive after the deadline will be rejected and will not be evaluated by TxDOT. A team of evaluators from TxDOT will evaluate the proposals as to the private consultant's competence, knowledge, and qualifications and as to the reasonableness of the proposed fee for the services. The criteria and evaluation process are further described in the RFP.

Deadlines: TxDOT must receive proposals prepared according to instructions in the RFP package on or before January 5, 2018, at 3:00 p.m. Proposal submittal instructions are specified in the RFP.

To Obtain a Copy of the RFP: Requests for a copy of the RFP should be submitted to Matt McCarter, Project Finance, Debt and Strategic Contracts Division, 125 East 11th Street, Austin, Texas 78701-2483, email: Matt.McCarter@txdot.gov, telephone number (512) 334-3827. Copies will also be available on the Electronic State Business Daily at <http://esbd.cpa.state.tx.us/>.

TRD-201704815

Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: November 27, 2017

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Workforce Solutions Deep East Texas

Request for Qualifications 17-371

The Deep East Texas Local Workforce Development Board, Inc. (DETLWDB) doing business as Workforce Solutions - Deep East Texas, is requesting interested and qualified parties to respond to this Request for Qualifications (RFQ 17-371) for Architectural Services for the Workforce Development Board.

The DETLWDB invites the submittal of responses to this RFQ from qualified firms(s) interested in providing architectural services in connection with renovation of current and future DETLWDB career centers.

The Board will award a contract for Architectural Services to Respondents whose proposals, conforming to the Request for Qualifications (RFQ), is determined to present the best value to the Board.

TRD-201704840
Kelly Davis
Executive Coordinator
Workforce Solutions Deep East Texas
Filed: November 28, 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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