TEXAS REGISTER

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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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In This Issue

RULE REVIEW

TABLES AND GRAPHICS

IN ADDITION

Open Meetings

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

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

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

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

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

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://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 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-0221-KP

Requestor:

The Honorable Dan Flynn

Chair, Committee on Pensions

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether the Teacher Retirement System may invest the funds of the system in life insurance funded by leveraged premiums (RQ-0221-KP)

Briefs requested by May 14, 2018

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

TRD-201801627
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: April 16, 2018

♦ ♦ ♦


Victoria Castro
11th Grade

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 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §401.308

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §401.308 ("Cash Five" Draw Game Rule). The purpose of the amendments is to change the Cash Five game matrix, offer guaranteed (fixed) prizes and set a liability limit for the Match 5 top prize. The new game matrix will change from the selection of 5 numbers out of a field of 37 numbers to a selection of 5 numbers out of a field of 35 numbers. This matrix change will improve the overall odds to win a prize in the Cash Five game.

The proposed amendments offer guaranteed prizes per prize tier level for matching three or more of the drawn winning combination of numbers and will award a free Cash Five Quick Pick ($1 value) for the fourth tier prize level in which a player matches 2 of the 5 numbers selected in the drawing. The amendments also propose to set a liability limit of $75,000 for the Match 5 top prize in the game. The Match 5 prize in Cash Five is proposed to be a fixed amount of $25,000, unless the Match 5 number of winners is greater than three (3), then the Match 5 prize shall be paid on a pari-mutuel rather than fixed prize basis and the liability limit of $75,000 will be divided equally by the number of Match 5 winners. The practice of setting a liability limit is a common lottery industry practice for games that offer fixed or guaranteed prizes. The cost of the ticket will remain at $1 per play.

Kathy Pyka, Controller, has determined that for each year of the first five years the amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses or rural communities, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Ryan Mindell, Acting Director of Lottery Operations, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit expected is increased sales due to additional player interest in the better overall odds and guaranteed prize tiers in the Cash Five game. These increased sales will lead to additional revenue for the Foundation School Fund and increased commissions for retailers.

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed amendments to the "Cash Five" Draw Game Rule. For each year of the first five years the proposed amendments will be in effect, Kathy Pyka, Controller, has determined the following:

(1) The proposed rule amendments do not create or eliminate a government program.

(2) Implementation of the proposed rule amendments does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed rule amendments does not require an increase or decrease in future legislative appropriations to the Commission.

(4) The proposed rule amendments do not require an increase or decrease in fees paid to the Commission.

(5) The proposed rule amendments do not create a new regulation.

(6) The proposal amends, but does not expand or limit, an existing Commission rule for a lottery draw game.

(7) The proposed rule amendments do not increase or decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule amendments do not positively or adversely affect this state's economy.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Deanne Rienstra, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at *legal.input@lottery.state.tx.us.* The Commission will hold a public hearing on this proposal on May 9, 2018, at 9:30 a.m., at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in the *Texas Register* in order to be considered.

These amendments are proposed under Texas Government Code §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code, Chapter 466.

§401.308. "Cash Five" Draw Game Rule.

(a) (No change.)

(b) Definitions. In addition to the definitions provided in §401.301 of this title (relating to General Definitions), and unless the context in this rule otherwise requires, the following definitions apply.

~~[(1) Advance Play--A player may purchase a Cash Five ticket for any of the five Cash Five drawings immediately following the current drawing. Example: On Monday, before the drawing, a Cash Five ticket can be purchased for Tuesday, Wednesday, Thursday, Friday, or Saturday drawings.]~~

(1) ~~[(2)]~~ Multi-draw--A player may purchase a Cash Five play [~~ticket~~] for up to 12 consecutive drawings beginning with the current draw.

(2) ~~[(3)]~~ Number--Any play integer from one through 35 [~~37~~] inclusive.

(3) ~~[(4)]~~ Play--The five numbers selected [~~on each play board~~] and printed on the ticket.

(4) ~~[(5)]~~ Play board--A field of the 35 [~~37~~] numbers found on the playslip.

(5) ~~[(6)]~~ Playslip--An optically readable card issued by the commission used by players of Cash Five to select plays. There shall be five play boards on each playslip identified as A, B, C, D, and E. A playslip has no pecuniary value and shall not constitute evidence of play [~~ticket~~] purchase or of numbers selected.

~~[(c) Price of ticket. The price of each Cash Five play shall be $1.00. Multiple draws are available for up to 12 consecutive draws beginning with the current draw. A player may purchase a Cash Five ticket for advance play.]~~

(c) ~~[(d)]~~ Play for Cash Five.

(1) Type of play. A Cash Five player must select 5 (five) [~~five~~] numbers out of a field of 35 (thirty-five) numbers in each play or allow number selection by a random number generator approved by the commission, referred to as Quick Pick. A winning play is achieved only when two, three, four, or five of the numbers selected by the player match, in any order, two, three, four, or five, respectively, of the five winning numbers drawn by the lottery.

(2) The price of a single Cash Five play for the Cash Five game is $1.00.

(3) ~~[(2)]~~ Method of play. The player may use playslips, or other commission-approved method of play, to make number selections. A ticket generated using a selection method that is not approved by the commission is not valid. A selection of a play may be made only if the request is made in person. Acceptable methods to select numbers for a play may include:

(A) using a self-service terminal;

(B) using a playslip;

(C) using a previously-generated "Cash Five" ticket provided by the player;

(D) requesting a retailer to use Quick Pick;

(E) requesting a retailer to manually enter numbers; or

(F) using a QR code generated through a Texas Lottery Mobile Application offered and approved by the commission.

(4) Except as provided in paragraph (3) of this subsection, Cash Five plays must be purchased using official Cash Five playslips. Playslips which have been mechanically completed are not valid. Cash Five tickets must be printed on official Texas Lottery paper stock or, for third-party point-of-sale systems approved by the commission, printed on paper stock or otherwise issued in a manner approved by the commission to provide tangible evidence of participation in a lottery game.

(5) Cash Five plays may be purchased only at a licensed location from a lottery retailer authorized to sell draw game tickets.

(6) Cash Five tickets shall show the player's selection of numbers, or Quick Pick (QP) numbers, boards played, drawing date(s), and serial numbers. It shall be the exclusive responsibility of the player to verify the accuracy of the player's selection(s) and other data printed on the ticket. A ticket is a bearer instrument until signed.

(7) ~~[(3)]~~ One prize per play. The holder of a winning play [~~ticket~~] may win only one prize per play in connection with the winning numbers drawn and shall be entitled only to the highest prize category won by those numbers.

(d) ~~[(e)]~~ Prizes for Cash Five.

~~[(1)]~~ [~~Prize amounts.~~] The first, second, and third prize amounts, for each drawing, paid to each Cash Five player who selects a matching combination of numbers is a fixed amount shown in the chart below, Figure: 16 TAC §401.308(d). The Match 5 top prize is a guaranteed (fixed) amount of $25,000; provided that, in any drawing where the number of top prize winning plays is greater than three (3), the top prize shall be paid on a pari-mutuel rather than fixed prize basis and a liability cap of $75,000 (Seventy-Five Thousand Dollars) will be divided equally by the number of top prize winning plays. In this case, the [~~will vary due to a pari-mutuel calculation. The~~] calculation of the Match 5 top [a] prize shall be rounded down so that prizes can be paid in multiples of whole dollars. Any part of the top pari-mutuel prize for a drawing that is not paid in prizes (breakage) shall be applied to offset prize expense. [~~Each prize category breakage will carry forward to the next drawing for each respective prize category. The prize amounts are based on the total amount in the prize category for that Cash Five drawing distributed equally over the number of matching combinations in each prize category.~~] The Match 2 (fourth prize) [~~fourth prize~~] is a guaranteed free Cash Five Quick Pick ticket. All other prizes are paid in cash. [~~$2 prize.~~]

Figure: 16 TAC §401.308(d)

[~~Figure: 16 TAC §401.308(e)(1)~~]

~~[(2) Prize pool. The prize pool for Cash Five prizes shall be a minimum of 50% of Cash Five sales. This pool will be allocated into two components. The first component consists of the funds necessary to pay all the fourth prize category $2 prize winners. The first component is obtained by an allocation from the Cash Five prize pool to the fourth prize category so that all of the fourth prize category shares will each receive the guaranteed $2 prize. The second component contains the remaining prize pool funds after subtraction of the first component allocation and will be referred to as the "residual prize pool". The residual prize pool will be allocated to the first, second, and third prize categories according to the percentages applicable for each prize category.]~~

~~[(3) Prize categories.]~~

~~[(A) First prize--The prize amount shall be calculated by dividing the prize category contributions by the number of shares for the prize category. A share is the matching combination, in one play, of all five numbers of the five numbers drawn (in any order). Each first prize will be paid in one lump-sum payment. The five-of-five first prize of $600 to $2,500,000 must be claimed at a Lottery claim center. Five-of-five prizes of over $2,500,000 must be claimed at the commission headquarters in Austin. The total prize category contribution for a drawing will include the following:]~~

[(i) ~~The direct prize category contribution shall be 40.15% of the residual prize pool for the drawing.~~]

[(ii) ~~If the first prize is not won by a Cash Five player from the drawing, the direct prize category contribution will roll into the second prize category.~~]

~~[(B) Second prize--The prize amount shall be calculated by dividing the prize category contributions by the number of shares for the prize category. A share is the matching combination, in one play, of any four of the five numbers drawn (in any order). The total prize category contribution will include the following:~~]

[(i) ~~The direct prize category contribution shall be 18.08% of the residual prize pool for the drawing.~~]

[(ii) ~~If the second prize is not won by a Cash Five player from the drawing, the direct prize category contribution will roll into the third prize category.~~]

~~[(C) Third prize--The prize amount shall be calculated by dividing the prize category contributions by the number of shares for the prize category. A share is the matching combination, in one play, of any three of the five numbers drawn (in any order). The total prize category contribution will include the following:~~]

[(i) ~~The direct prize category contribution shall be 41.77% of the residual prize pool for the drawing.~~]

[(ii) ~~If the third prize is not won by a Cash Five player from the drawing, the direct prize category contribution will carry forward to the prize pool for the next drawing.~~]

~~[(D) Fourth prize--The prize amount is a guaranteed $2.~~]

~~[(f) Ticket purchases.~~]

~~[(1) Cash Five tickets may be purchased only at a licensed location from a lottery retailer authorized to sell draw game tickets.~~]

~~[(2) Cash Five tickets shall show the player's selection of numbers, or Quick Pick (QP) numbers, boards played, drawing date, and serial numbers.~~]

~~[(3) It shall be the exclusive responsibility of the player to verify the accuracy of the player's selection(s) and other data printed on the ticket. A ticket is a bearer instrument until signed.~~]

~~[(4) Except as provided in subsection (d)(2) of this section, Cash Five tickets must be purchased using official Cash Five playslips. Playslips which have been mechanically completed are not valid. Cash Five tickets must be printed on official Texas Lottery paper stock or, for third-party point-of-sale systems approved by the commission, printed on paper stock or otherwise issued in a manner approved by the commission to provide tangible evidence of participation in a lottery game. Cash Five tickets must be purchased at a licensed location through an authorized retailer's terminal.~~]

(e) [~~(g)~~] Drawings.

(1) The Cash Five drawings shall be held each week on Monday, Tuesday, Wednesday, Thursday, Friday, and Saturday evenings at 10:12 p.m. Central Time except that the drawing schedule may be changed by the executive director, if necessary.

(2) The drawings will be conducted by lottery officials.

(3) Each drawing shall determine, at random, five winning numbers in accordance with Cash Five draw procedures. Any numbers drawn are not declared winning numbers until the drawing is certified by the lottery in accordance with the draw procedures. The winning numbers shall be used in determining all Cash Five winners for that drawing.

(4) Each drawing shall be witnessed by an independent certified public accountant. All drawing equipment used shall be examined by a lottery drawing representative and the independent certified public accountant immediately prior to a drawing and immediately after the drawing.

(5) A drawing will not be invalidated based on the financial liability of the lottery.

(f) [~~(h)~~] The executive director may authorize promotions in connection with Cash Five.

(g) [~~(i)~~] Announcement of incentive or bonus program. The executive director shall announce each incentive or bonus program prior to its commencement. The announcement shall specify the beginning and ending time, if applicable, of the incentive or bonus program and the value for the award.

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 April 13, 2018.

TRD-201801603
Bob Biard
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: May 27, 2018
For further information, please call: (512) 344-5012

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CHAPTER 402. CHARITABLE BINGO OPERATIONS DIVISION

SUBCHAPTER A. ADMINISTRATION

16 TAC §402.102

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §402.102 (Bingo Advisory Committee). The purpose of the proposed amendments is to update and streamline the Bingo Advisory Committee (BAC) member eligibility and appointment procedures, and procedural requirements regarding BAC meetings.

Kathy Pyka, Controller, has determined that for each year of the first five years the amendments will be in effect, there will be no fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses or rural communities, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments, as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

J. Winston Krause, Commission Chairman, has determined that for each year of the first five years the proposed amendments will be in effect, the anticipated public benefit is providing greater flexibility to the Commission in administering the BAC process to enhance bingo industry participation in advising the Commission on charitable bingo regulatory issues.

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed rule amendments. For each year of the first five years the proposed amendments will be in effect, Kathy Pyka, Controller, has determined the following:

(1) The proposed amendments do not create or eliminate a government program.

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed amendments does not require an increase or decrease in future legislative appropriations to the Commission.

(4) The proposed amendments do not require an increase or decrease in fees paid to the Commission.

(5) The proposed amendments do not create a new regulation.

(6) The proposed amendments do not expand or limit an existing regulation.

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability.

(8) The proposed amendments do not positively or adversely affect this state's economy.

The Commission requests comments on the proposed amendments from any interested person. Comments may be submitted to Bob Biard, General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. Comments must be received within 30 days after publication of this proposal in the *Texas Register* in order to be considered. The Commission also will hold a public hearing to receive comments on this proposal at 10:00 a.m. on May 9, 2018, at 611 E. 6th Street, Austin, Texas 78701.

The amendments are proposed under the Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction.

This proposal is intended to implement the Texas Occupations Code, Chapter 2001.

§402.102. Bingo Advisory Committee.

(a) (No change.)

(b) What is the composition of the Bingo Advisory Committee?

(1) The Commission may appoint nine persons as members of the BAC.

(2) The Commission must appoint members to represent the following interest groups:

(A) the public;[~~,~~]

(B) conductors that are not licensed commercial lessors;[~~,~~]

(C) conductors that are licensed commercial lessors;[~~, and~~]

(D) commercial lessors;[~~.~~]

[~~(3)~~] [~~The Commission may appoint members to represent:~~]

(E) [~~(A)~~] licensed manufacturers;[~~,~~] and

(F) [~~(B)~~] licensed distributors.

(3) [~~(4)~~] If there is not an individual to represent one of the required interest groups, the Commission may appoint a member from the remaining interest groups.

(c) What are the minimum eligibility requirements to serve on the BAC?

(1) A member may not represent a licensee that is delinquent in payment of any prize fees [~~or gross rental taxes~~] for which a final jeopardy determination has been made by the Commission.

[~~(2) A member may not represent a licensee that has a license denied, revoked or suspended by the Commission.~~]

(2) [~~(3)~~] A member representing the public may not be an individual who is required by statute to be listed on a conductor, commercial lessor, manufacturer, or distributor license application.

(3) [~~(4)~~] A member must meet the criminal history standards in Bingo Enabling Act Sections 2001.105(b), 2001.154(a)(1) [~~2001.154(a)(5)~~], 2001.202(1), and 2001.207(1).

(4) [~~(5)~~] A nominee for membership must provide complete and accurate information on the nomination form.

(d) How are members nominated to serve on the BAC?

(1) Individuals may submit a nomination form during the [~~regular~~] nomination period determined by the Commission. [~~which begins on March 1 and ends on April 30 each year and at other times if there is an unexpected member vacancy.~~]

(2) Nomination forms are available from the Charitable Bingo Operations Division or the Commission's website [~~web site~~].

(e) What is the appointment process?

(1) Commission [~~Charitable Bingo Operations Division~~] staff verifies [~~verify~~] eligibility and qualifications of nominees and sends [~~send~~] all nominations that meet minimum requirements to each Commissioner.

(2) Each Commissioner may interview those nominees. [~~Charitable Bingo Operations Division staff rank the nominations with advice and consultation of the Executive Director as appropriate.~~]

[~~(3) Charitable Bingo Operations Division staff provide to the BAC at the first meeting after June 1 each year, and at other times if there is an unexpected member vacancy, the names of those nominees that staff will recommend to the Commissioners.~~]

(3) [~~(4)~~] The BAC may be a resource to the Commission by reviewing nominations, interviewing prospective members, and submitting its recommendations to the [~~Charitable Bingo Operations Division and the~~] Commissioners for consideration. However, the BAC will not act to exclude nominees.

[~~(5) Each Commissioner may interview those nominees recommended by staff or other nominees.~~]

(4) [~~(6)~~] The Commissioners shall [~~may~~] appoint a nominee based on a review of the nomination form and/or interview. [~~staff or BAC recommendation or may appoint any other nominee.~~]

(f) How long may members serve on the BAC?

(1) The Commission appoints each member to serve for a one-year [three-year] term or until the Commission appoints a successor.

[(2) Members serve staggered terms of three years so that three members' terms expire August 31 each year.]

(2) [(3)] Each member serves at the pleasure of the Commission.

(g) May a BAC member be removed from the BAC before the member's term has expired?

[(1)] The Commission may remove a member at any time without cause.

[(2) The Commission may consider any of the following, among other things, to be grounds for inquiry and possible removal of a person from the BAC:]

[(A) failure to meet the eligibility requirements described in subsection (c) of this section;]

[(B) failure to attend two consecutive, regular scheduled meetings for any reason;]

[(C) unlawful conduct;]

[(D) making of false statements, including omissions;]

[(E) acts involving dishonesty, fraud, deceit or misrepresentation;]

[(F) abuse of legal process;]

[(G) violation of an order of a court;]

[(H) conduct evidencing mental or emotional instability; or]

[(I) conduct evidencing drug or alcohol abuse or dependency.]

[(3) Failure to disclose a publicly filed allegation of any of the items in paragraph (2) of this subsection is grounds for removal.]

(h) When and where does the BAC meet?

(1) The BAC may meet quarterly or more frequently at the Commission's request.

(2) BAC meetings must be held at the Commission headquarters in Austin, Texas; provided that, meetings[, except one meeting per year] may be held at a location in Texas other than Austin, subject to the discretion of the Commission and BAC presiding officer. [Charitable Bingo Operations Division Director.]

(i) (No change.)

(j) Are BAC meetings open to the public? Yes. The BAC must publish notice of a BAC meeting at least 10 full days prior to the date of the meeting. The meeting notice shall include the time, day, and location of the meeting as well as the agenda items. The BAC presiding officer shall request the Commission, through Commission staff, post the notice on the Commission's website. [BAC meetings shall be open meetings in accordance with the Open Meetings Act, Texas Government Code, Chapter 551.]

(k) (No change.)

(l) Are minutes kept of BAC meetings?

(1) The BAC must keep minutes of each meeting reflecting all formal action taken.

(2) The BAC may consider a transcript prepared by a court reporter to be the minutes of the meeting. The Commission will provide a court reporter (or transcript service if a court reporter is not available) to prepare a transcript of each BAC meeting.

(3) The BAC must approve the minutes at its next meeting, and file the approved minutes with the Charitable Bingo Operations Division Director, who shall post the approved minutes on the Commission's website.

(m) What is the BAC's annual workplan?

[(1) The BAC must submit to the Commission for approval at the first meeting prior to September 1 each year a workplan to guide the activities of the BAC for the following year.]

(1) [(2)] The workplan will contain [those] items that [the BAC and] the Commission determines. [determine are relevant to the state of the bingo industry.]

(2) The BAC may submit to the Commission for their consideration and approval additional items for the workplan that are relevant to the state of the bingo industry.

(n) What are the BAC's reporting requirements?

(1) The BAC must report their activities quarterly to the Commission, although the Commission may require reporting more frequently.

(2) The BAC will report annually to the Commission the BAC's perspective on the state of the charitable bingo industry in Texas with specific comments on the following:

(A) adjusted gross receipts;

(B) net receipts;

(C) charitable distributions;

(D) expenses;

(E) attendance; and

(F) any other matter requested by the Commission.

(3) At the first Commission meeting held prior to September 1 each year, the BAC will provide to the Commission a report of its activities as they relate to the workplan approved by the Commission the previous year.

(o) (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 April 13, 2018.

TRD-201801607
Bob Biard
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: May 27, 2018
For further information, please call: (512) 344-5392

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SUBCHAPTER C. BINGO GAMES AND EQUIPMENT

16 TAC §402.300

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §402.300 (Pull-Tab Bingo). The purpose of the proposed amendments is to remove an unnecessary provision (subsection (d)(3)) requiring detailed information to be provided in a packing slip inside each deal of pull-tab bingo tickets.

Kathy Pyka, Controller, has determined that for each year of the first five years the amendments will be in effect, there will be no fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses or rural communities, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments, as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Alfonso D. Royal III, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed amendments will be in effect, the anticipated public benefit is reduced regulation of the manufacture of pull-tab bingo tickets.

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed rule amendments. For each year of the first five years the proposed amendments will be in effect, Kathy Pyka, Controller, has determined the following:

(1) The proposed amendments do not create or eliminate a government program.

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed amendments does not require an increase or decrease in future legislative appropriations to the Commission.

(4) The proposed amendments do not require an increase or decrease in fees paid to the Commission.

(5) The proposed amendments do not create a new regulation.

(6) The proposed amendments do not expand or limit an existing regulation.

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability.

(8) The proposed amendments do not positively or adversely affect this state's economy.

The Commission requests comments on the proposed amendments from any interested person. Comments may be submitted to Bob Biard, General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. Comments must be received within 30 days after publication of this proposal in the *Texas Register* in order to be considered. The Commission also will hold a public hearing to receive comments on this proposal at 10:00 a.m. on May 9, 2018, at 611 E. 6th Street, Austin, Texas 78701.

The amendments are proposed under the Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction.

This proposal is intended to implement the Texas Occupations Code, Chapter 2001.

§402.300. Pull-Tab Bingo.

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

(d) Manufacturing requirements.

(1) Manufacturers of pull-tab bingo tickets must manufacture, assemble, and package each deal in such a manner that none of the winning pull-tab bingo tickets, nor the location, or approximate location of any winning pull-tab bingo ticket can be determined in advance of opening the deal by any means or device. Nor should the winning pull-tab bingo tickets, or the location or approximate location of any winning pull-tab bingo ticket be determined in advance of opening the deal by manufacture, printing, color variations, assembly, packaging markings, or by use of a light. Each manufacturer is subject to inspection by the Commission, its authorized representative, or designee.

(2) All winning pull-tab bingo tickets as identified on the payout schedule must be randomly distributed and mixed among all other pull-tab bingo tickets of the same serial number in a deal regardless of the number of packages, boxes, or other containers in which the deal is packaged. The position of any winning pull-tab bingo ticket of the same serial numbers must not demonstrate a pattern within the deal or within a portion of the deal. If a deal of pull-tabs is packed in more than one box or container, no individual container may indicate that it includes a winner or contains a disproportionate share of winning or losing tickets.

~~[(3) Each deal of pull-tab bingo tickets must contain a packing slip inside the deal. This packing slip must substantiate the name of the manufacturer, the serial number for the specific deal, the date the deal was packaged, and the name or other identification of the person who packaged the deal.]~~

(3) [~~(4)~~] Each deal's package, box, or other container shall be sealed at the manufacturer's factory with a seal including a warning to the purchaser that the deal may have been tampered with if the package, box, or other container was received by the purchaser with the seal broken.

(4) [~~(5)~~] Each deal's serial number shall be clearly and legibly placed on the outside of the deal's package, box or other container or be able to be viewed from the outside of the package, box or container.

(5) [~~(6)~~] A flare must accompany each deal.

(6) [~~(7)~~] The information contained in subsection (a)(3)(A), (B), (C), (D), and (F) of this section shall be located on the outside of each deal's sealed package, box, or other container.

(7) [~~(8)~~] Manufacturers must seal or tape, with tamper resistant seal or tape, every entry point into a package, box or container of pull-tab bingo tickets prior to shipment. The seal or tape must be of such construction as to guarantee that should the container be opened or tampered with, such tampering or opening would be easily discernible.

(8) [~~(9)~~] All high tier winning instant pull-tab bingo tickets must utilize a secondary form of winner verification.

(9) [~~(10)~~] Each individual pull-tab bingo ticket must be constructed so that, until opened by a player, it is substantially impossible, in the opinion of the Commission, to determine its concealed letter(s), number(s) or symbol(s).

(10) [~~(11)~~] No manufacturer may sell or otherwise provide to a distributor and no distributor may sell or otherwise provide to a licensed authorized organization of this state or for use in this state any pull-tab bingo game that does not contain a minimum prize payout of 65% of total receipts if completely sold out.

(11) [~~(12)~~] A manufacturer in selling or providing pull-tab bingo tickets to a distributor shall seal or shrink-wrap each package, box, or container of a deal completely in a clear wrapping material.

(12) [~~(13)~~] Pull-tab bingo tickets must:

(A) be constructed of cardboard and glued or otherwise securely sealed along all four edges of the pull-tab bingo ticket and between the individual perforated break-open tab(s) on the ticket. The glue must be of sufficient strength and type so as to prevent the separation of the sides of a pull-tab bingo ticket;

(B) have letters, numbers or symbols that are concealed behind perforated window tab(s), and allow such letters, numbers or symbols to be revealed only after the player has physically removed the perforated window tab(s);

(C) prevent the determination of a winning or losing pull-tab bingo ticket by any means other than the physical removal of the perforated window tab(s) by the player;

(D) be designed so that the numbers and symbols are a minimum of 2/32 (4/64) inch from the dye-cut window perforations;

(E) be designed so that the lines or arrows that identify the winning symbol combinations will be a minimum of 5/32 inch from the open edge farthest from the hinge of the dye-cut window perforations;

(F) be designed so that highlighted "pay-code" designations that identify the winning symbol combinations will be a minimum of 3.5/32 inch from the dye-cut window perforations;

(G) be designed so that secondary winner protection codes appear in the left margin of the ticket, unless the secondary winner protection codes are randomly generated serial number-type winner protection codes. Randomly generated serial number-type winner protection codes will be randomly located in either the left or middle column of symbols and will be designed so that the numbers are a minimum of 3.5/32 inch from the dye-cut window perforations. Any colored line or bar or background used to highlight the winner protection code will be a minimum 3.5/32 (7/64) inch from the dye-cut window perforations;

(H) have the Commission's seal placed on all pull-tab bingo tickets by only a licensed manufacturer; and

(I) be designed so that the name of the manufacturer or its distinctive logo, form number and serial number unique to the deal, name of the game, price of the ticket, and the payout structure remain when the letters, numbers, and symbols are revealed.

(13) [~~(14)~~] Wheels must be submitted to the Commission for approval. As a part of the approval process, the following requirements must be demonstrated to the satisfaction of the Commission.

(A) wheels must be able to spin at least four times with reasonable effort;

(B) wheels must only contain the same number or symbols as represented on the event ticket; and

(C) locking mechanisms must be installed on wheel(s) to prevent play outside the licensed authorized organization's licensed time(s).

(14) [~~(15)~~] A manufacturer must include with each pull-tab bingo ticket deal instructions for how the pull-tab bingo ticket can be played in a manner consistent with the Bingo Enabling Act and this chapter. The instructions are not required to cover every potential method of playing the pull-tab bingo ticket deal.

(e) - (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 April 13, 2018.

TRD-201801608
Bob Biard
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: May 27, 2018
For further information, please call: (512) 344-5392

SUBCHAPTER D. LICENSING REQUIREMENTS

16 TAC §402.402

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §402.402 (Registry of Bingo Workers). The purpose of the proposed amendments is to (1) remove a requirement that a provisional employee of a licensed authorized organization (bingo conductor) must indicate the playing location(s) where they are provisionally employed on the Application for Registry of Approved Bingo Workers (Bingo Registry) form submitted to the Commission; and (2) extend the length of time a provisional employee who is not a resident of Texas may work without being listed on the Bingo Registry from 45 days to 75 days. A provisional employee is an individual who is employed by a bingo conductor as an operator, manager, cashier, usher, caller, or salesperson while awaiting the results of a criminal history background check, whether paid or not. Except during the time period allowed for provisional employees awaiting the result of a background check, all bingo workers must be listed on the Bingo Registry.

Kathy Pyka, Controller, has determined that for each year of the first five years the amendments will be in effect, there will be no fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses or rural communities, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments, as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Alfonso D. Royal III, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed amendments will be in effect, the anticipated public benefit is to provide greater flexibility to out-of-state bingo worker applicants and their bingo conductor employers while awaiting the results of such an applicant's criminal history background check.

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed rule amendments. For each year of the first five years the proposed amendments will be in effect, Kathy Pyka, Controller, has determined the following:

(1) The proposed amendments do not create or eliminate a government program.

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed amendments does not require an increase or decrease in future legislative appropriations to the Commission.

(4) The proposed amendments do not require an increase or decrease in fees paid to the Commission.

(5) The proposed amendments do not create a new regulation.

(6) The proposed amendments do not expand or limit an existing regulation.

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability.

(8) The proposed amendments do not positively or adversely affect this state's economy.

The Commission requests comments on the proposed amendments from any interested person. Comments may be submitted to Bob Biard, General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. Comments must be received within 30 days after publication of this proposal in the *Texas Register* in order to be considered. The Commission also will hold a public hearing to receive comments on this proposal at 10:00 a.m. on May 9, 2018, at 611 E. 6th Street, Austin, Texas 78701.

The amendments are proposed under the Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction.

This proposal is intended to implement the Texas Occupations Code, Chapter 2001.

§402.402. Registry of Bingo Workers.

(a) - (q) (No change.)

(r) A provisional employee must:

[(1) ~~indicate the playing location(s) where the individual is provisionally employed on the Texas Application for Registry of Approved Bingo Workers form submitted to the Commission.~~]

(1) [~~(2)~~] immediately stop working:

(A) after 14 days if the individual is not listed on the registry and is a resident of this state.

(B) after 75 [~~45~~] days if the individual is not listed on the registry, not a resident of this state, and submitted a fingerprint card for a background investigation. If the fingerprint cards are returned by the law enforcement agency as unclassifiable, the Commission will notify the individual, and the individual may continue to be provisionally employed by submitting a written request and new fingerprint cards within 14 days of the notification.

(C) if found to be ineligible on the basis of the background investigation.

(2) [~~(3)~~] wear an identification card while on duty with the registry applicant's name, "Provisional Employment" as the unique registration number, and the submission date of the registry application as the expiration date.

(s) (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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Bob Biard
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: May 27, 2018
For further information, please call: (512) 344-5392

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 185. PHYSICIAN ASSISTANTS

22 TAC §185.7

The Texas Medical Board (Board) proposes an amendment to §185.7, concerning Temporary License.

The amendment deletes obsolete language referring to "surgeon assistants".

Scott Freshour, General Counsel for the Texas Medical Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to have rules that reflect contemporary terminology.

Mr. Freshour has also determined that for the first five-year period the rule is in effect, there will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small businesses, 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, Mr. Freshour has determined the following:

(1) The proposed rule does not create or eliminate a government program.

(2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.

(4) The proposed rule does not require an increase or decrease in fees paid to the agency.

(5) The proposed rule does not create a new regulation.

(6) The proposed rule does not expand, limit, or repeal an existing regulation.

(7) The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does 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 email comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §204.101, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; enforce this subtitle; and establish rules related to licensure.

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

§185.7. Temporary License.

(a) The board, or its designee may issue a temporary license to an applicant who:

(1) meets all the qualifications for a license under the Act but is waiting for the next scheduled meeting of the board for the license to be issued;

(2) seeks to temporarily substitute for a licensed physician assistant during the licensee's absence, if the applicant:

(A) is licensed or registered in good standing in another state, territory, or the District of Columbia;

(B) submits an application on a form prescribed by the board; and

(C) pays the appropriate fee prescribed by the board;

(3) has graduated from an educational program for physician assistants [~~or surgeon assistants~~] accredited by the Accreditation Review Commission for the Education of Physician Assistants (ARC-PA) or by the committee's predecessor or successor entities no later than six months previous to the application for temporary licensure and is waiting for examination results from the National Commission on Certification of Physician Assistants; or

(4) has not, on a full-time basis, actively practiced as a physician assistant, as defined under §185.4(c) of this title (relating to Procedural Rules for Licensure Applicants), but meets guidelines set by the physician assistant board including, but not limited to, length of time out of active practice as a physician assistant and duration of temporary licenses.

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

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

Filed with the Office of the Secretary of State on April 12, 2018.

TRD-201801596
Scott Freshour
Interim Executive Director
Texas Medical Board
Earliest possible date of adoption: May 27, 2018
For further information, please call: (512) 305-7016

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CHAPTER 194. MEDICAL RADIOLOGIC TECHNOLOGY

SUBCHAPTER A. CERTIFICATE HOLDERS, NON-CERTIFIED TECHNICIANS, AND OTHER AUTHORIZED INDIVIDUALS OR ENTITIES

22 TAC §194.7

The Texas Medical Radiologic Technology Board proposes amendments to §194.7, concerning Biennial Renewal of Certificate or Placement on the Board's General Registry for Non-Certified Technicians Generally.

The amendment to §194.7, deletes language to subsection (c), related to continuing education requirements, so that the minimum requirements for formal hours no longer require live, instructor-led hours. The amendments will result in more efficiency while maintaining rigorous requirements ensuring current competency, by aligning the rules with the requirements set forth by the American Registry of Radiologic Technologists, which lack a live instruction requirement. Amendments are further made to subsection (c)(5), and make corrections to typographical errors.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to align continuing education requirements with ARRT's requirements, thereby increasing efficiency for individuals subject to the rules, while maintaining minimum requirements necessary to ensure current and ongoing competency. Further benefits anticipated will be to eliminate possible confusion caused by typographical errors.

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

(1) The proposed rules do not create or eliminate a government program;

(2) Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency;

(4) The proposed rules do not require an increase or decrease in fees paid to the agency;

(5) The proposed rules create a new regulation;

(6) The proposed rules limit or repeal an existing regulation;

(7) The proposed rules decrease the number of individuals subject to the rule's applicability; and

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

Scott Freshour has also determined that for each year of the first five years the section as proposed is in effect, there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses or rural communities.

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

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §601.058, 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. The amendment is further authorized under S.B. 674 (85th Legislature, R.S.).

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

§194.7. Biennial Renewal of Certificate or Placement on the Board's General Registry for Non-Certified Technicians Generally.

(a) Temporary Certificates.

(1) A temporary certificate shall expire one year from the date of issue. A person whose temporary certificate has expired is not eligible to reapply for another temporary certificate.

(2) A temporary certificate is not subject to a renewal or extension for any reason.

(3) Persons who hold temporary certificates, either general or limited, are not subject to continuing education requirements set forth under subsection (c) of this section.

(b) General and Limited Certificates; Placement on the Board's General Registry for Non-Certified Technicians.

(1) MRTs and LMRTs certified and NCTs registered under the Act shall register biennially and pay a fee. A holder of a certificate or NCT general registration permit may, on notification from the board, renew an unexpired certificate or permit by submitting the required form and documents and by paying the required renewal fee to the board on or before the expiration date of the permit.

(2) The fee shall accompany the required form which legibly sets forth the certificate or permit holder's name, mailing address, business address, and other necessary information prescribed by the board. The certificate or permit holder must include with the required forms and fee documentation of continuing education completed during the previous two years to the date of renewal ("biennial renewal period").

(c) Continuing education requirements.

(1) Generally.

(A) (No change.)

(B) LMRT. As a prerequisite to the biennial registration of a limited certificate, a minimum of 18 hours of continuing education acceptable to the board must be completed during each biennial renewal period. The hours completed must be in the topics of general radiation health and safety or related to the categories of limited certificate held. The continuing education must be completed in the following categories:

(i) At least nine hours of the required number of hours must be satisfied by attendance and participation in formal[~~, instructor-led~~] courses that are designated for Category A or A+ credits of continuing education evaluated by an organization recognized by ARRT as a Recognized Continuing Education Evaluation Mechanism (RCEEM) or RCEEM+ during the biennial renewal period.

(ii) The remaining nine credits for the biennial renewal period may be composed of self-study or courses not approved for formal CE, and shall be recorded in a manner that can be easily transmitted to the board upon request.

(iii) Any additional hours completed through self-study must be verifiable, through activities that include reading materials, audio materials, audiovisual materials, or a combination thereof.

(C) An MRT or LMRT who also holds a current Texas license, registration, or certification in another health profession may satisfy the continuing education requirement for renewal of a certificate with hours counted toward renewal of the other license, registration, or certification, provided such hours meet all the requirements of this subsection.

(D) An MRT or LMRT who holds a current and active annual registration or credential card issued by ARRT indicating that the certificate holder is in good standing and not on probation satisfies the continuing education requirement for renewal of a general or limited certificate, provided the hours accepted by ARRT were completed during the certificate holder's biennial renewal period and meet or exceed the hour the requirements set out in this subsection. The board must be able to verify the status of the card presented by the certificate holder electronically or by other means acceptable to the board. The board may review documentation of the continuing education activities in accordance with paragraph (5) of this subsection.

(E) NCTs. As a prerequisite to the biennial registration of a general registration permit, the individual must complete a minimum of 12 hours of continuing education during each biennial renewal period. The continuing education must be completed in the following categories:

(i) At least six hours of the required number of hours must be satisfied by attendance and participation in formal[~~, instructor-led courses~~] that are designated for Category A or A+ credits of continuing education evaluated by an organization recognized by ARRT as a Recognized Continuing Education Evaluation Mechanism (RCEEM) or RCEEM+ during the biennial renewal period.

(ii) The remaining six credits for the biennial renewal period may be composed of self-study or courses not approved for formal CE, and shall be recorded in a manner that can be easily transmitted to the board upon request.

(iii) Any additional hours completed through independent self-study must be verifiable, through activities that include reading materials, audio materials, audiovisual materials, or a combination thereof.

(2) Content Requirements.

(A) At least 50% of the required number of hours must be activities which are directly related to the use and application of ionizing forms of radiation to produce diagnostic images and/or administer treatment to human beings for medical purposes. For the purpose of this section, directly related topics include, but are not limited to: radiation safety, radiation biology and radiation physics; anatomical positioning; radiographic exposure technique; radiological exposure technique; emerging imaging modality study; patient care associated with a radiologic procedure; radio pharmaceutics, pharmaceutics, and contrast media application; computer function and application in radiology; mammography applications; nuclear medicine application; and radiation therapy applications.

(B) No more than 50% of the required number of hours may be satisfied by completing or participating in learning activities which are related to the use and application of non-ionizing forms of radiation for medical purposes.

(C) No more than 50% of the required number of hours may be satisfied by completing or participating in learning activities which are indirectly related to radiologic technology. For the purpose

of the section, indirectly related topics include, but are not limited to, patient care, computer science, computer literacy, introduction to computers or computer software, physics, human behavioral sciences, mathematics, communication skills, public speaking, technical writing, management, administration, accounting, ethics, adult education, medical sciences, and health sciences. Other courses may be accepted for credit provided there is a demonstrated benefit to patient care.

(3) Alternative Continuing Education Accepted by the Board. The additional activities for which continuing education credit will be awarded are as follows:

(A) successful completion of an entry-level or advanced-level examination previously passed in the same discipline of radiologic technology administered by or for the ARRT during the renewal period. The examinations shall be topics dealing with ionizing forms of radiation administered to human beings for medical purposes. Such successful completion shall be limited to not more than one-half of the continuing education hours required;

(B) successful completion or recertification in a cardiopulmonary resuscitation course, basic cardiac life support course, or advanced cardiac life support course during the continuing education period. Such successful completion or recertification shall be limited to not more than:

(i) three hours credit during a renewal period for a cardiopulmonary resuscitation course or basic cardiac life support course; or

(ii) 6 hours credit during a renewal period for an advanced cardiac life support course;

(C) attendance and participation in tumor conferences (limited to six hours), in-service education and training offered or sponsored by Joint Commission-accredited or Medicare certified hospitals, provided the education/training is properly documented and is related to the profession of radiologic technology;

(D) teaching in a program accredited by a regional accrediting organization such as the Southern Association of Colleges and Schools; or an institution accredited by JRCERT, JRCNMT, JTCCVT, CCE, ABHES, ASRT, professional organizations or associations, or a federal, state, or local governmental entity, with a limit of one contact hour of credit for each hour of instruction per topic item once during the continuing education reporting period for up to a total of 6 hours. No credit shall be given for teaching that is required as part of one's employment. Credit may be granted in direct, indirect or non-ionizing radiation based on the topic; or

(E) developing and publishing a manuscript of at least 1,000 words in length related to radiologic technology with a limit of six contact hours of credit during a continuing education period. Upon audit by the board, the certificate holder must submit a letter from the publisher indicating acceptance of the manuscript for publication or a copy of the published work. The date of publication will determine the continuing education period for which credit will be granted. Credit may be granted in direct, indirect or non-ionizing radiation based on the topic.

(4) Reporting Requirements. A certificate holder or NCT must report on the biennial registration form if she or he has completed the required continuing education during the previous renewal period.

(A) A certificate holder may carry forward continuing education credit hours that meet the requirements under this subsection and earned prior to the biennial registration renewal period which are in excess of the biennial hour requirement, and apply such hours to the subsequent renewal period requirements.

(i) For MRTs, a maximum of 48 total excess credit hours meeting the requirements under this subsection may be carried forward.

(ii) For LMRTs, a maximum of 24 hours meeting the requirements of this subsection may be carried forward. Excess continuing education credits may not be carried forward or applied to a report of continuing education more than two years beyond the date of the registration following the period during which the credits were earned.

(B) A NCT may carry forward continuing education credit hours that meet the requirements under this subsection and earned prior to the biennial registration renewal period which are in excess of the biennial hour requirement, and apply such hours to the subsequent renewal period requirements. A maximum of 12 total excess credit hours meeting the requirements under paragraph (3)(A) of this subsection may be carried forward. Excess continuing education credits may not be carried forward or applied to a report of continuing education more than two years beyond the date of the registration following the period during which the credits were earned.

(5) Exemptions.

(A) A [~~certificate~~] holder of a certificate or registration as a non-certified technician may request in writing an exemption for the following reasons, subject to the approval of the certification committee of the board:

(i) catastrophic illness;

(ii) military service of longer than one year's duration outside the United States;

(iii) residence of longer than one year's duration outside the United States; or

(iv) good cause shown on written application of the certificate holder that gives satisfactory evidence to the board that the certificate holder is unable to comply with the requirement for continuing medical education.

(B) An exception under paragraph (5) [~~(6)~~] of this subsection may not exceed one registration period, but may be renewed biennially, subject to the approval of the board.

(6) A certificate holder or NCT who is a military service member may request an extension of time, not to exceed two years, to complete any continuing education requirements.

(7) This subsection does not prevent the board from taking disciplinary action with respect to a certificate holder or an applicant for a certificate by requiring additional hours of continuing education or of specific course subjects.

(8) The board may require written verification of continuing education credits from any certificate holder within 30 days of request. Failure to provide such verification may result in disciplinary action by the board.

(9) Unless exempted under the terms of this subsection, a certificate holder or NCT's failure to obtain and timely report required hours of continuing education as required and provided for in this subsection shall result in the nonrenewal of the certificate until such time as the certificate holder obtains and reports the required continuing education hours; however, the executive director of the Medical board may issue to such a certificate holder a temporary certificate numbered so as to correspond to the nonrenewed certificate. Such a temporary certificate shall be issued at the direction of the executive director for a period of no longer than 90 days. A temporary certificate issued pursuant to this subsection may be issued to allow the certificate holder

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 practice.

(10) Determination of contact hour credits. A contact hour shall be defined as 50 minutes of attendance and participation. One-half contact hour shall be defined as 30 minutes of attendance and participation during a 30-minute period.

(d) Criminal History Requirement for Registration Renewal.

(1) An applicant must submit a complete and legible set of fingerprints for purposes of performing a criminal history check of the applicant.

(2) The board may not renew the certificate or NCT general registration permit of a person who does not comply with the requirement of paragraph (1) of this subsection.

(3) A holder of a certificate or NCT general registration permit is not required to submit fingerprints under this section for the renewal of the certificate or permit if the holder has previously submitted fingerprints for the initial issuance of the certificate NCT general registration permit or as part of a prior renewal of a certificate or NCT general registration permit.

(e) Report of Impairment on Registration Form.

(1) A holder of a certificate or NCT general registration permit who reports an impairment that affects his or her ability to actively practice as a MRT, LMRT, or NCT shall be given written notice of the following:

(A) based on the individual's impairment, he or she may request:

(i) to be placed on retired status pursuant to §194.10 of this chapter (relating to Retired Certificate or NCT General Registration Permit);

(ii) to voluntarily surrender the certificate or NCT registration permit pursuant to §194.33 of this chapter (relating to Voluntary Relinquishment or Surrender of Certificate or Permit); or

(iii) to be referred to the Texas Physician Health Program pursuant to Chapter 180 of this title (relating to Texas Physician Health Program and Rehabilitation Orders); and

(B) that failure to respond to the written notice or otherwise not comply with paragraph (1) of this subsection within 45 days shall result in a referral to the board's investigation division for possible disciplinary action.

(2) The board shall provide written notice as described in paragraph (1) of subsection within 30 days of receipt of the certificate holder's registration form indicating the certificate holder's impairment.

(f) The board shall deny an application for renewal of a certificate upon notice of the certificate or NCT general registration permit holder's default of child support payments, as provided under Chapter 232 of the Texas Family Code, or default of a Texas Guaranteed Student Loan Corporation guaranteed student loan, as provided in the Texas Education Code, §57.491.

(g) The board shall deny an application for renewal of a certificate or NCT general registration permit or take and/or impose other disciplinary action against such an individual who falsifies an affidavit or otherwise submits false information to obtain renewal of a certificate, pursuant to the Act, §601.302.

(h) If the renewal fee and completed application form are not received on or before the expiration date of the certificate, the fees set forth in Chapter 175 of this title (relating to Fees and Penalties) shall apply.

(i) Except as otherwise provided, the board shall not waive fees or penalties.

(j) The board shall stagger biennial registration of certificate or NCT general registration permit holders proportionally on a periodic basis.

(k) A certificate or NCT general registration permit holder who engages in activities requiring a certificate or other authorization while in Texas, without an biennial registration permit for the current renewal period as provided for in the board rules has the same force and effect as and is subject to all penalties of practicing without a certificate or other required authorization.

(l) Expired Biennial Registration.

(1) Generally.

(A) If a certificate or NCT general registration permit holder's registration has been expired for less than one year, the certificate or permit holder may obtain a new registration by submitting to the board a completed registration application, and the registration and penalty fees, as set forth under Chapter 175 (relating to Fees and Penalties).

(B) If a certificate holder or NCT general registration permit holder's registration has been expired for one year or longer, the certificate or permit holder's certificate or permit will be automatically canceled, unless an investigation is pending, and the certificate or permit holder may not obtain a new registration.

(C) A person whose certificate or NCT general registration permit has expired may not engage in activities that require a certificate or permit until the certificate or permit has been renewed. Performing activities requiring a certificate or permit during the period in which registration has expired without obtaining a new registration for the current registration period has the same effect as, and is subject to all penalties of, practicing radiologic technology in violation of the Act.

(D) If a certificate or NCT general registration permit has been expired for one year or longer, it is considered to have been canceled, unless an investigation is pending. A new certificate or NCT general registration permit may be obtained by complying with the requirements and procedures for obtaining an original certificate or permit.

(2) Renewal for technologists on active military duty with expired certificate or NCT general registration permit. A holder of a certificate or NCT general registration permit that has been expired for longer than a year may file a complete application for another certificate or permit of the same type as that which expired.

(A) The application shall be on official board forms and be filed with the application and initial certification or NCT general registration permit fee.

(B) An applicant shall be entitled to a certificate or NCT general registration permit of the same type as that which expired based upon the applicant's previously accepted qualification and no further qualifications or examination shall be required.

(C) The application must include a copy of the official orders or other official military documentation showing that the holder was on active duty during any portion of the period for which the applicant was last certified or registered as an NCT with the board.

(D) An applicant for a different type of certificate than that which expired must meet the requirements of this chapter generally applicable to that type of certificate.

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 April 16, 2018.

TRD-201801624
Scott Freshour
Interim Executive Director
Texas Medical Board
Earliest possible date of adoption: May 27, 2018
For further information, please call: (512) 305-7016

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PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 367. ENFORCEMENT

22 TAC §§367.1 - 367.15

The Texas State Board of Plumbing Examiners (Board) proposes the repeal of 22 Tex. Admin. Code Chapter 367. The Board proposes this repeal contemporaneously with the proposed new Chapter 367.

The new Chapter 367 proposed contemporaneously herewith is largely a reorganization and restatement of the rules and requirements contained in the current Chapter 367. As such, the Board elected to pursue adoption of the new Chapter 367 in a repeal-and-replace fashion, in order to provide a more straightforward and approachable presentation of the new chapter for public review and comment and, conversely, to avoid the formatting required when proposing amendments to existing rules which the Board deemed would be onerous to compile and would detract from readability. In consideration of the foregoing, the analysis and discussion of the impact of the proposed repeal contained herein assumes and contemplates that the proposed repeal would be finally adopted only if the proposed new Chapter 367 is simultaneously adopted in its place.

The proposed repeal was identified during the Board's periodic rule review of Chapter 367, made in accordance with §2001.039 of the Texas Government Code, and announced by the Board by publication in the November 18, 2016, issue of the *Texas Register.*

Fiscal Impact on State and Local Government

Lisa G. Hill, Executive Director, has determined that for the first five-year period the proposed repeal is in effect, there are no foreseeable fiscal implications for state or local governments.

Public Benefits / Costs to Regulated Persons

Ms. Hill has also determined that for each of the first five years the proposed repeal is in effect the public will benefit from the new, better-organized version of Chapter 367 the Board separately proposes to replace the repealed version. The proposed repeal constitutes the removal of regulations and, thus, Ms. Hill has determined that there are no substantial costs anticipated for regulated persons as a result of the repeal. A thorough analysis of the anticipated public benefits and potential costs to regulated persons resulting from the new Chapter 367 proposed for adoption contemporaneously herewith is outside the scope of this notice. Persons wishing to review said analysis should consult the notice for the proposed adoption of new Chapter 367.

One-for-One Rule Analysis

This notice proposes the repeal of Chapter 367, and does not propose to adopt a rule. As such, the agency asserts that §2001.0045 of the Texas Government Code, generally requiring an agency to repeal or amend an existing rule prior to adoption of a rule, is not applicable. Additionally, given that the proposed repeal of Chapter 367 does not have a fiscal note which imposes a cost on regulated persons, including another state agency, a special district, or local government, the agency asserts that proposal and adoption of said rules is not subject to the requirements of Texas Government Code §2001.0045. Moreover, the proposed repeal of Chapter 367, brought in conjunction with the proposed adoption of a new Chapter 367, is necessary to protect the health, safety and welfare of the residents of this state and is thus exempt from the requirements of Texas Government Code §2001.0045.

Government Growth Impact Statement

Pursuant to Texas Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the repeal of Chapter 367, as contemplated in the context of a new Chapter 367 being simultaneously proposed in its place. For each of the first five years Chapter 367 is repealed, the agency has determined the following:

(1) The proposed repeal of Chapter 367 does not create or eliminate a government program;

(2) Implementation of the proposed repeal of Chapter 367 does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed repeal of Chapter 367 does not require an increase or decrease in future legislative appropriations to the agency;

(4) The proposed repeal of Chapter 367 does not require an increase or decrease in fees paid to the agency;

(5) The proposed repeal of Chapter 367 does not create a new regulation;

(6) The proposed repeal of Chapter 367, repeals the regulations contained therein, which the agency asserts will be contingent upon the simultaneous adoption of the new Chapter 367;

(7) The proposed repeal of Chapter 367 does not increase or decrease the number of individuals subject to the chapter's applicability; and,

(8) The proposed repeal of Chapter 367 does not adversely affect this state's economy and has the potential to positively impact this state's economy.

Local Employment Impact Statement

The Executive Director has determined that no local economies will be substantially affected by the proposed repeal of Chapter 367 and, as such, the agency is exempted from preparing a local employment impact statement pursuant to Texas Government Code §2001.022.

Fiscal Impact on Small Businesses, Micro-Businesses, and Rural Communities

The Executive Director has determined that the proposed repeal of Chapter 367 will not have an adverse effect on small businesses, micro-businesses or rural communities because there are no substantial anticipated costs to persons who are required to comply as a result of the repeal. As such, the agency asserts that preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as provided by Texas Government Code §2006.002, are not required.

Public Comments

Written comments regarding the proposed repeal of Chapter 367 may be submitted by mail to Lisa G. Hill at P.O. Box 4200, Austin, Texas 78765-4200 (Phone: (512) 936-5200); or by email to info@tsbpe.texas.gov with the subject line "Chapter 367 repeals." Persons wishing to comment not on the proposed repeal of Chapter 367 but, instead, on the proposed new Chapter 367 are hereby instructed to consult and follow the instructions for public comment contained in that separate notice. All comments must be received within 30 days.

Statement of Authority

The repeal of Chapter 367 proposed herein is made under the authority of §1301.251(2) of the Texas Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce said chapter. No other statute, article, or code is affected by the proposed repeal.

§367.1. General Provisions.
§367.2. Standards of Conduct.
§367.3. Requirements for Plumbing Companies, Responsible Master Plumbers; Certificate of Insurance.
§367.4. Display of License and Company Name.
§367.5. On-Site License and Registration Checks.
§367.6. Nonperformance of Service.
§367.7. Violations of Standards and Practices.
§367.8. Investigation of Complaints.
§367.9. Enforcement Committee; Complaint Review.
§367.10. Administrative Penalty.
§367.11. Reprimand; Probation; Suspension; Revocation.
§367.12. Failure to Request Hearing After Notice of Intent to Deny or Revoke.
§367.13. Informal Conference.
§367.14. Contested Case; State Office of Administrative Hearings.
§367.15. Failure to Attend Hearing and Default.

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 April 10, 2018.

TRD-201801541
Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
Earliest possible date of adoption: May 27, 2018
For further information, please call: (800) 845-6584

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22 TAC §§367.1 - 367.22

The Texas State Board of Plumbing Examiners (Board) proposes new Chapter 367, concerning Enforcement. The Board proposes this new chapter simultaneously with the proposed repeal of the existing Chapter 367. The proposed new chapter largely retains the requirements set forth in the existing chapter, but divides several of the longer sections into discrete rules that are more compact and easier to navigate. The individual, substantive changes to Chapter 367 as it currently exists, are described below on a section-by-section basis.

The revisions herein were identified during the Board's periodic rule review of Chapter 367, made in accordance with §2001.039 of the Texas Government Code, and announced by the Board by publication in the November 18, 2016, issue of the *Texas Register.*

Substantive Changes From Existing Requirements

New §367.1 is proposed to implement the provisions, of §1301.251(2) of the Texas Occupations Code. Proposed §367.1, concerning Authority, contains subsections (a) - (d) of the existing rule and rewords these subsections to include references to the statutes that grant authority to specific persons, like municipalities and Plumbing Inspectors, to enforce Chapter 1301 of the Occupations Code (Plumbing License Law or PLL). The title of the rule is also changed from "General Provisions" to "Authority."

New §367.2 is proposed to implement the provisions, of §§1301.255, 1301.501, 1301.452(a), and 1301.251(2) of the PLL. Proposed §367.2, concerning Code Requirements, reorganizes and rewords the provisions from subsections (e), (g), (h) and the first sentence of (i) of the existing §367.1, to improve clarity. A new provision, subsection (f), is added, prohibiting a licensee or registrant from installing plumbing that is not in compliance with the PLL or any other state laws, Board rules, or any applicable plumbing codes, and prohibiting a person from requiring a licensee or registrant to install non-compliant plumbing.

New §367.3 is proposed to implement the provisions, of §§1301.351, 1301.452(a), 1301.302, 1301.252(a) and 1301.251(2) of the PLL. Proposed §367.3, concerning Standards of Conduct- Licensees and Registrants, rewords subsections (a) through (e) of the existing §367.2. New language is added in proposed §367.3(a)(5) to define the term customer as the person to whom plumbing services were actually provided, even in situations where the services were provided pursuant to a contract with a third party, for purposes of the duty to provide invoices and/or completed contract documents to said customer.

New §367.4 is proposed to implement the provisions, of §§1301.262, 1301.255(e), 1301.503, 1301.551(d), 1301.452(a) and 1301.251(2) of the PLL. Proposed §367.4, concerning Standards of Conduct- Plumbing Inspectors, reorganizes and rewords the provisions contained in subsection (f) of the existing §367.2 to create a standalone section for Plumbing Inspectors and to improve clarity. New language is added in proposed subsection (b) to specify that a Plumbing Inspector is considered to be affiliated with a particular political subdivision if the inspector is employed by or under contract with a political subdivision to perform plumbing inspections or employed by a qualified plumbing inspection company under contract with a political subdivision to perform plumbing inspections. A new provision is also added in proposed subsection (c) to clarify that said subsection, concerning payment accepted by a Plumbing Inspector for a plumbing inspection, does not apply to an inspection subject to §1301.255 of the PLL. Finally, new language is included in proposed subsection (e) to require a Plumbing Inspector to include their license number on any correspondence and on

certain documents reflecting whether or not plumbing work has passed an inspection.

New §367.5 is proposed to implement the provisions, of §§1301.002(9-a), 1301.351, 1301.3576 and 1301.251(2) of the PLL. Proposed §367.5, concerning Responsibilities of RMP - General, rewords subsections (a)(3) - (5) and (a)(13) of the existing §367.3 to improve clarity. To more accurately reflect Board procedures, new language is added in proposed subsection (b) requiring a Master Plumber who wishes to be removed or added as the Responsible Master Plumber (RMP) of record for a company to submit written notification of the change to the Board within 10 business days after the effective date of the change. New language is also added in proposed subsection (c) to make it clear that the RMP of record is responsible for all contracts and agreements to perform plumbing secured, and permits obtained, under their Master Plumber License, even if the RMP did not personally obtain the permit or draft or sign the contract or agreement. New subsection (d), formerly subsection (a)(13), is also revised to expressly state that the RMP of record is responsible for the general supervision and management of plumbing work performed under his or her license and the individuals performing the plumbing work, even if those individuals are subcontractors and not employees.

New §367.6 is proposed to implement the provisions, of §§1301.3576, 1301.552 and 1301.251(2) of the PLL. Proposed §367.6, concerning Responsibilities of RMP- Insurance Required, rewords subsections (a)(6) - (9) of the existing §367.3 to create a standalone rule addressing insurance requirements for RMPs. Specifically, in subsection (b), new language is added to reflect the Board's current procedures requiring the RMP to submit their Certificate of Insurance to the Board through their online account with the Board. Meanwhile, in subsection (c), new language is added imposing a duty on the RMP or owner of a plumbing company to furnish certain information about their insurance carrier to their customers upon request.

New §367.7 is proposed to implement the provisions, of §§1301.351, 1301.356 and 1301.251(2) of the PLL. Proposed §367.7, concerning Responsibilities of RMP- Medical Gas Piping Systems, rewords subsection (b) of the existing §367.3 to improve clarity and create a standalone rule addressing the responsibilities of a RMP who holds a Medical Gas Piping Installation Endorsement, ensuring that the same principles which require a person to secure the services of an RMP in advertising plumbing services and require the RMP to supervise the provision of said services by a plumbing company, are applied to the provision of plumbing services requiring a Medical Gas Piping Installation Endorsement issued by the Board.

New §367.8 is proposed to implement the provisions, of §§1301.351, 1301.3565 and 1301.251(2) of the PLL. Proposed §367.8, concerning Responsibilities of RMP - Multipurpose Residential Fire Protection Sprinkler Systems, rewords subsection (c) of the existing §367.3 to improve clarity and create a standalone rule addressing the responsibilities of a RMP who holds a Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement, ensuring that the same principles which require a person to secure the services of an RMP in advertising plumbing services and require the RMP to supervise the provision of said services by a plumbing company, are applied to the provision of plumbing services requiring a Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement.

New §367.9 is proposed to implement the provisions, of §§1301.351(a-2), 1301.302, 1301.452(a) and 1301.251(2) of the PLL. Proposed §367.9, concerning Advertising; Offering to Perform Plumbing, rewords subsections (a)(1) - (2) of the existing §367.3 to create a standalone rule addressing the requirements a person must meet to be able to advertise or otherwise offer to perform plumbing. New provisions are added in proposed subsection (b) to explain what it means to "secure the services" of a RMP. New provisions are added in proposed subsection (c) to clarify that a licensee who contracts for or otherwise agrees to perform plumbing does not violate §1301.351(a-2) of the PLL if the licensee has a written subcontracting agreement with a person who has secured the services of a RMP; and, to enumerate the requirements of such subcontracting agreement, in proposed subsection (d).

New §367.10 is proposed to implement the provisions, of §§1301.351(a-2), 1301.302 and 1301.251(2) of the PLL. Proposed §367.10, concerning Display of RMP Name and License Number, consolidates subsections (a)(11) - (12) of the existing §367.3 with all of the existing §367.4 to create a single standalone rule addressing the requirements for displaying the name and license number of a RMP of record. New language is added in proposed subsections (b) and (c) to clarify that both the RMP and the owner of a plumbing company are responsible for ensuring that the requisite information concerning disclosure of the RMP and regulation by the Board is displayed on all service vehicles, the first page of each proposal, invoice, or contract, and all advertisements for plumbing services.

New §367.11 is proposed to implement the provisions, of §§1301.351(a), (b), 1301.452(a)(5), 1301.551(d) and 1301.251(2) of the PLL. Proposed §367.11, concerning License or Registration Required, revises and expands upon subsections (b)(2) - (5) of the existing §376.7 to more explicitly state the activities for which a license is required and what constitutes the improper use of a certificate of licensure, pocket card, or license or registration number.

New §367.12 is proposed to implement the provisions, of §§1301.351(d), 1301.203(b), 1301.259 and 1301.251(2) of the PLL. Proposed §367.12, concerning On-Site License and Registration Checks, includes a portion of subsection (a) from the existing §367.4 (requiring a licensee or registrant to carry proof of licensure), all of the existing §367.5, and subsection (a) of the existing §367.8. New language is added in proposed subsection (b) to require licensees and registrants to cooperate with a Field Representative of the Board conducting an on-site check.

New §367.13 is proposed to implement the provisions, of §§1301.301, 1301.303 and 1301.251(2) of the PLL. Proposed §367.13, concerning Filing Complaints, is a completely new rule requiring persons who wish to make a complaint with the Board to do so in writing, enumerates the information a complaint must contain, allows the Director of Enforcement to refuse to accept a complaint that does not contain the information necessary to determine whether the Board has jurisdiction over the alleged activity giving rise to the complaint, and prescribes when the Board may decline to investigate an anonymous complaint.

New §367.14 is proposed to implement the provisions, of §§1301.301, 1301.303, 1301.304 and 1301.251(2) of the PLL. Proposed §367.14, concerning Processing Complaints, is a completely new rule that provides for the Director of Enforcement to review each complaint to determine whether the Board has jurisdiction. If the Board has jurisdiction, the new rule requires the Director of Enforcement to assign a complaint number and appoint a Field Representative to investigate the

complaint. If the Board does not have jurisdiction, the rule requires the Director of Enforcement to notify the complainant of that determination in writing.

New §367.15 is proposed to implement the provisions, of §§1301.301, 1301.303, 1301.304, 1301.452(a) and 1301.251(2) of the PLL. Proposed §367.15, concerning Investigating Complaints, rewords and reorganizes subsections (b) - (e) and (h) of the existing §367.8 to improve clarity. Subsections (f) and (g) of the existing §367.8 are deleted as being duplicative of the PLL, and not offering any additional guidance. New language is added in subsection (a) to specify that the Board may open an investigation on its own initiative and in subsection (b) to clarify that the Board has authority to investigate the owner of a company subject to the PLL and a person who advertises or otherwise offers to perform plumbing work without holding a license. A new provision is added in subsection (d) to require licensees and registrants to cooperate with the Board and its Field Representatives during the investigation of a complaint.

New §367.16 is proposed to implement the provisions, of §§1301.258(c), 1301.301, 1301.304, 1301.5045, 1301.451, 1301.452, 1301.701, 1301.5071 and 1301.251(2) of the PLL. Proposed §367.16, concerning Enforcement Committee; Complaint Review, rewords and reorganizes the existing §367.9 to improve clarity. New language is added in subsection (b)(4) to allow the Enforcement Committee to close a complaint if it concludes that the respondent has voluntarily come into compliance with the PLL, Board rules, or a Board order. New language is added in subsection (c) to more clearly explain the circumstances under which the Enforcement Committee may close a complaint and issue a warning.

New §367.17 is proposed to implement the provisions, of §§1301.451, 1301.452, 1301.701, 1301.702 and 1301.251(2) of the PLL. Proposed §367.17, concerning Administrative Penalty, includes the existing §367.10 and makes non-substantive changes to ensure that the terms respondent and SOAH are used consistently throughout the rule and all of the new Chapter 367. The penalty schedule contained in the proposed §367.17 is updated to conform to the new section numbers resulting from prior changes to Chapters 361, 363 and 365 of the Board rules made as a result of the Board's quadrennial rule review pursuant to §2001.039 of the Texas Government Code, and the changes to Chapter 367 proposed herein. Several of the penalty amounts in said schedule are revised. The following items, previously constituting grounds for imposition of an administrative penalty in the existing Chapter 367, are added to the schedule as discrete penalties:

Failing to verify a Certificate of Insurance (COI) on the Board's website before issuing a permit (under the authority, and to implement the provisions, of §§1301.552, 1301.701, 1301.702 and 1301.251(2) of the PLL);

Performing a plumbing inspection while having a financial or advisory interest in a plumbing company (under the authority, and to implement the provisions, of §§1301.353, 1301.262, 1301.701, 1301.702 and 1301.251(2) of the PLL);

Failing to provide a six-hour continuing professional education course (under the authority, and to implement the provisions, of §§1301.404(b) - (d), 1301.405(a), (b), 1301.701, 1301.702 and 1301.251(2) of the PLL);

Violating a Cease and Desist Order (under the authority, and to implement the provisions, of §§1301.5045, 1301.701, 1301.702 and 1301.251(2) of the PLL);

Engaging in plumbing without direct supervision (under the authority, and to implement the provisions, of §§1301.351(a), 1301.701, 1301.702 and 1301.251(2) of the PLL);

Refusing to fill out an Employer Certification Form (under the authority, and to implement the provisions, of §§1301.002(4), (10), 1301.352, 1301.354(b), 1301.701, 1301.702, 1301.452(a) and 1301.251(2) of the PLL); and,

Requiring a person who obtains a permit to pay a registration or administrative fee (under the authority, and to implement the provisions, of §§1301.551(g), 1301.701, 1301.702, 1301.452(a) and 1301.251(2) of the PLL).

The following wholly new penalties are added, arising from new regulations imposed by the proposed new Chapter 367:

Failing to include inspector license number on an inspection report (under the authority, and to implement the provisions, of §§1301.255(e), 1301.262, 1301.353, 1301.701, 1301.702, 1301.452(a) and 1301.251(2) of the PLL); and,

Failing to provide insurance information to a customer upon request (under the authority, and to implement the provisions, of §§1301.3576, 1301.552, 1301.701, 1301.702, and 1301.251(2) of the PLL).

New §367.18 is proposed to implement the provisions, of §§1301.451, 1301.452, 1301.5045, and 1301.701 of the PLL. Proposed §367.18, concerning Reprimand; Probation; Suspension; Revocation, includes the existing §367.11. New language is added to subsection (a) to add citations of statutory authority concerning the duty of the Board to revoke, suspend, or refuse to renew a license, endorsement, or registration or reprimand a holder of a license or registration, upon the determination that a violation of the PLL, an order issued by the Board, or of a Board Rule has occurred.

New §367.19 is proposed to implement the provisions, of §§1301.451, 1301.453, 1301.454 and 1301.251(2) of the PLL. Proposed §367.19, concerning Failure to Request a Hearing After Notice of Intent to Deny or Revoke, includes the existing §367.12. A reference to §1301.451 of the PLL is added in subsection (a) to clarify that §367.19 applies to a denial, revocation, or suspension arising from §1301.451 of the PLL.

New §367.20 is proposed to implement the provisions, of §§1301.5071 and 1301.251(2) of the PLL. Proposed §367.20, concerning Informal Conference; Violation of Law, Rule or Board Order, includes the existing §367.13 and is generally reworded to improve clarity. New language is added to subsection (a) to allow the Enforcement Committee to invite the complainant or a third party with information relevant to the investigation to attend an informal conference. Subsection (b), which addresses the notice of the informal conference provided to the respondent, is expanded to specify what information the notice must include and when the notice must be sent. Subsection (d) requires the Enforcement Committee to set a formal hearing at the State Office of Administrative Hearings (SOAH) if the informal conference fails to result in an agreed settlement and the respondent requests a hearing.

New §367.21 is proposed to implement the provisions, of §§1301.454, 1301.713, and 1301.251(2) of the PLL. Proposed §367.21, concerning Contested Case; State Office of Administrative Hearings, includes the existing §367.14 and makes non-substantive changes to ensure that the terms respondent and SOAH are used consistently throughout the rule and all of the new Chapter 367.

New §367.22 is proposed for adoption under the authority of §1301.251(2) of the PLL. Proposed §367.22, concerning Failure to Attend Hearing and Default, includes the existing §367.15. Subsection (b) is restated to clarify and disclose current Board procedures wherein the Board may affirmatively seek dismissal and remand on a default basis in accordance with §2001.056 of the Texas Government Code. Subsections (c), (d), and (e) are reordered so that the existing subsection (d) becomes the new subsection (c), the existing subsection (e) becomes the new subsection (d), and the existing subsection (c) becomes the new subsection (e). Language is added to the new subsection (c) concerning contested cases arising from applications for licensure, requiring the Board to issue a final order in the event the administrative law judge at SOAH dismisses the case and returns the file to the Board for informal disposition on a default basis, wherein, said final order notifies the applicant of the effect of their default; namely, that their application is deemed withdrawn and, furthermore, notifying said applicant of their ability to make a new application for licensure one year after the date of the dismissal of the case at SOAH.

Fiscal Impact on State and Local Government

Ms. Lisa G. Hill, Executive Director, has determined that for the first five-year period the new Chapter 367 is in effect, there are no foreseeable fiscal implications for state or local governments as a result of enforcing or administering this chapter as proposed, and the Board anticipates that the effects of the new chapter will be revenue neutral.

The foregoing notwithstanding, as noted *supra.,* and discussed in further detail, *infra.,* analyzing the public benefits and costs to regulated persons, the proposed new Chapter 367 imposes two new rules which have the potential to result in increased violations and, thereby, increased administrative penalties collected by the Board, ultimately resulting in potential increased revenue to the state. Furthermore, these same violations would also constitute grounds for a Plumbing Inspector for a municipality or a water district to similarly issue fines, pursuant to §1301.502 of the PLL, thereby potentially generating increased revenue for certain local political subdivisions.

Specifically, with respect to the new regulation imposed by proposed §367.4(e), the schedule of standard administrative penalties to be included as a part of the new Chapter 367 and contained in proposed §367.17 assigns a standard penalty of $1,000 for a violation of this rule, and is scheduled as a Class B violation, reserved for less-egregious offenses. Multiple violations of a similar nature or other aggravating factors may result in a deviation from the schedule, and imposition of a higher penalty, not to exceed the statutory maximum of $5,000 per day, as provided by §1301.702(a) of the PLL. There are approximately 1,400 persons currently licensed by the Board as Plumbing Inspectors. An indeterminate number of those licensed Plumbing Inspectors could violate the rule. As with all new rules, dissemination of rule changes through required continuing education should limit these violations. The Board also has the authority, by and through the proposed new Chapter 367, to issue warnings and close complaints for voluntarily compliance, which are valuable tools in educating unwitting violators, and increasing awareness of the impact of new rules in the plumbing community. However, the more probable result of the new rule may be that persons performing plumbing inspections who are not licensed to do so, or those that are employing persons to conduct plumbing inspections who are not licensed to do so, will be more readily apparent as a result of the new rule, and will lead to the discovery and prosecution of additional violations of other currently-existing rules relating to engaging in plumbing without a license, or employing a person without the appropriate license.

Meanwhile, with respect to the new regulation imposed by proposed §367.6(c), the schedule of standard administrative penalties to be included as a part of the new Chapter 367 and contained in proposed §367.17 assigns a standard penalty of $1,000 for a violation of this proposed new rule, and is scheduled as a Class B violation, reserved for less-egregious offenses. Multiple violations of a similar nature or other aggravating factors may result in a deviation from the schedule, and imposition of a higher penalty, not to exceed the statutory maximum of $5,000 per day, as provided by §1301.702(a) of the PLL. There are approximately 7,250 persons who have current documents on file with the Board indicating they are operating as a RMP. An indeterminate number of these persons may violate the proposed new rule. To the extent open records requests currently being received by the Board pertaining to Certificates of Insurance arise from a situation where the plumber has refused to provide insurance information to a customer, and assuming the number of such requests persists after adoption of the proposed rule, this may result in approximately $150,000 - $200,000 of increased revenue for the state on an annual basis, as such administrative fines are distributed to the General Revenue Fund and are not maintained by the agency.

Public Benefits / Costs to Regulated Persons

Lisa Hill, Executive Director, has determined that for each of the first five years the proposed new Chapter 367 is in effect, the public benefit anticipated as a result of enforcing this chapter will be to have rules that are better-organized, clearer, more consistent, and free of confusing redundancies with other statutes and rules. Ms. Hill has further determined that for the first five years the proposed new Chapter 367 is in effect, there are no substantial costs anticipated for persons required to comply with the proposed new chapter.

Specifically, the proposed new Chapter 367 is largely a reorganization and restatement of the existing Chapter 367. However, as discussed *supra.,* the proposed new Chapter 367 does impose two wholly new regulations.

The proposed new §367.4(e) would, for the first time, require Plumbing Inspectors to include their license number on all correspondence made in connection with a plumbing inspection and on certain documents reflecting whether or not a plumbing system has passed inspection. Said rule requires a Plumbing Inspector to add a short identifying number (presently a maximum of four digits) to documents they are already generating. Many municipalities and other political subdivisions requiring inspections already require the inspector to include an identifying number assigned to them by that municipality or political subdivision. This rule would simply require the inspector to include their Board-issued number alongside this information. Taking the foregoing into consideration, the Board asserts that there are only *de minimis* costs associated with persons seeking to comply with the rule. Meanwhile, the proposed chapter will benefit the public by reassuring the public on the face of inspection documents, that it was conducted by a licensed individual. The requirement is analogous to that of a Responsible Master Plumber who, in accordance with the currently-existing Board Rule, expressed by proposed §367.10(c), must similarly include their license number on certain documents they, or their plumbing company, generate. The same principles underlying that rule, in encouraging disclosure of licensure to the public, would similarly

apply to Plumbing Inspectors providing documents to the public, or that are otherwise subject to public disclosure, in discharging their duties. Improper inspections, including those conducted by unlicensed persons, will also be easier for the Board, a municipality, or other person charged with enforcing the Plumbing License Law, to investigate and prosecute, benefitting the health, safety and welfare of the public. Specifically, Field Investigators for the Board conducting job site inspections often encounter inspection documents which merely have a signature or initials of the purported inspector, and are often not legibly written. Inclusion of the Plumbing Inspector license number will provide a readily-discernable identifying mark, aiding the Board's investigations, and reducing interactions between the Board and the municipality or political subdivision in seeking to locate the purported inspector.

The proposed new §367.6(c) would, for the first time, require a Master Plumber acting as a Responsible Master Plumber to furnish certain information about their commercial general liability insurance, required by §1301.3576 of the PLL, with the customer, upon written request. Specifically, the proposed new rule would require the RMP to disclose to the customer: (i) the name of their insurance carrier; and, (ii) the name, address, and phone number of the insurance agent from whom the policy was obtained. The proposed new §367.6(c) will not require a Master Plumber acting as a RMP to obtain additional insurance or to generate any new documentation. A RMP is already required under current law (Tex. Occ. Code §1301.3576(1)) to maintain such insurance and provide the Board with a certificate evidencing such insurance on a form promulgated and distributed by the Board (Certificate of Insurance or COI). The COI contains all relevant information required to be disclosed to the customer by the proposed new rule. As such, a RMP who merely provides a copy of their COI to their customer would be in compliance with the proposed rule. Costs incurred by the licensee may include the materials and overhead costs to physically print a copy of the form and perhaps postage or other minor costs associated with transmitting it to the customer. However, the method by which the RMP tenders the information to the customer is not dictated by the proposed rule, and the RMP could potentially avoid even those *de minimis* costs by verbally relaying the insurance information required to be disclosed. Taking the foregoing into consideration, the Board asserts there are only *de minimis* costs associated with persons seeking to comply with the chapter. Meanwhile, the public will derive valuable benefits from the Chapter 367. Senate Bill 1354, Regular Session, 81st Legislature, effective on and after September 1, 2009, amended §1301.552 of the PLL to require municipalities and other political subdivisions which require a Responsible Master Plumber to obtain a permit before performing plumbing work, to verify with the Board whether the person obtaining said permit has a valid COI on file as a part of the permitting process. The Board thereby became, essentially, a clearinghouse to collect COIs and verify them for interested parties, supplanting the various municipalities and political subdivisions that were handling this task. This new system created uniformity amongst the various municipalities and political subdivisions, affording gains in efficiency, and aided by new digital advances and the Internet (though with some attendant administrative costs and burdens borne by the Board). Ultimately, though, the purpose of the insurance is to benefit the public by providing a remedy to an aggrieved customer who has been harmed by a plumbing company. However, in order for the public to benefit from the insurance, they must have sufficient knowledge of the policy to make a claim. As a practical matter, the issue of a RMP's insurance coverage typically only becomes relevant where the customer feels aggrieved, and an insurance claim is usually only pursued where the customer believes they are at an impasse with the plumber. Sometimes the plumber's liability insurance is pursued when the customer contacts the Board seeking relief and, only then, learns of the insurance. In these situations, communications with the plumber have often broken down, and the plumber is not being forthcoming with their insurance information. Moreover, the plumber is arguably incentivized to actively withhold their insurance information from the customer, and prevent the customer from making claims and increasing the plumber's insurance rates. The end result is that the Board has become a critical resource for the public in obtaining information concerning a RMP's liability insurance, in the form of open records requests made to the Board in accordance with the Texas Public Information Act (Texas Government Code Chapter 552). Specifically, the Board fields approximately 150-200 open records requests each year relating to requests of the public for a RMP's insurance information. As knowledge of the Board's role as a repository for Certificates of Insurance has propagated, said open records requests have steadily increased over time. The proposed new §367.6(c) will incentivize a RMP to disclose their insurance information to the customer when requested by the customer in writing. The public will derive a benefit from the increased awareness of and ease at obtaining this information. The requirement may also spur the plumber and customer to maintain or reacquire communications with one another and, potentially, resolve the matter in lieu of the customer making a claim against the plumber's insurance. Increased disclosure of a RMP's insurance to the public should also result in fewer open records requests being made to the Board for this information, thereby freeing up Board resources to attend to more critical matters, which will also benefit the public.

One-for-One Rule Analysis

Given that the proposed new Chapter 367 does not have a fiscal note which imposes a cost on regulated persons, including another state agency, a special district, or local government, the agency asserts that proposal and adoption of said rules is not subject to the requirements of Texas Government Code §2001.0045. Moreover, all rules contained in the proposed new Chapter 367 are necessary to protect the health, safety and welfare of the residents of this state and are thus exempt from the requirements of Texas Government Code §2001.0045.

Government Growth Impact Statement

Pursuant to Texas Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed new Chapter 367. For each of the first five years the new Chapter 367 is in effect, the agency has determined the following:

(1) The proposed new Chapter 367 does not create or eliminate a government program;

(2) Implementation of the proposed new Chapter 367 does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed new Chapter 367 does not require an increase or decrease in future legislative appropriations to the agency;

(4) The proposed new Chapter 367 does not require an increase or decrease in fees paid to the agency;

(5) The proposed new Chapter 367, while largely a restatement and reorganization of existing regulations, does impose the following new regulations which may be cross-referenced to the detailed substantive descriptions above: (i) proposed §367.4(e); and (ii) proposed §367.6(c);

(6) The proposed new Chapter 367, while largely a restatement and reorganization of existing regulations, does expand the following existing regulations which may be cross-referenced to the substantive descriptions above: (i) proposed §367.5(b); (ii) proposed §367.6(b); (iii) proposed §367.10(b), (c); and, (iv) the penalty schedule contained in proposed §367.17. The proposed new Chapter 367 does not repeal a regulation existing prior to the proposed repeal of Chapter 367;

(7) The proposed new Chapter 367 does not increase or decrease the number of individuals subject to the chapter's applicability. While new regulations are added and others expanded, the number of persons subject to regulation under Chapter 367 does not change; and

(8) The proposed new Chapter 367 does not adversely affect this state's economy and has the potential to positively impact this state's economy by distributing additional money to the General Revenue Fund as a result of increased administrative penalties arising from violations of the new regulations proposed.

Local Employment Impact Statement

The Executive Director has determined that no local economies will be substantially affected by the proposed new Chapter 367 and, as such, the agency is exempted from preparing a local employment impact statement pursuant to Texas Government Code §2001.022.

Fiscal Impact on Small Businesses, Micro-Businesses, and Rural Communities

The Executive Director has determined that the proposed new Chapter 367 will not have an adverse effect on small businesses, micro-businesses or rural communities because there are no substantial anticipated costs to persons who are required to comply with the proposed new Chapter 367. As a result, the agency asserts that preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as provided by Texas Government Code §2006.002, are not required.

The Board has approximately 34,000 active licenses (Journeyman Plumber, Master Plumber, and the like) and approximately 43,000 registrants (persons registered as a Plumber's Apprentice, Drain Cleaner, and the like). Meanwhile, the Board has approximately 7,250 Master Plumbers who have current records on file indicating they are serving as a Responsible Master Plumber and allowed by law to advertise and market plumbing services directly to the public, thereby serving as an analogue for the number of plumbing companies operating across the State of Texas. Presumably many of these persons and plumbing companies constitute a small business, or a micro-business, and/or are located in a rural community. However, the Board licenses individuals to engage in and offer plumbing services to the public, and not businesses or corporate organizational structures. Therefore, any attempt to ascribe costs and impact to small businesses, micro-businesses and rural communities as a result of the rules proposed herein would be inherently speculative, unreliable and not predicated on any factual information available to the Board. Regardless, the Board asserts that any substantial costs borne by a small business or micro-business or any substantial fiscal impact on a rural community would be not as a result of compliance with the rules proposed herein but as a result of the cumulative effects of individual persons violating the Plumbing License Law and incurring administrative fines and penalties.

Public Comments

Written comments regarding the proposed Chapter 367 may be submitted by mail to Lisa G. Hill at P.O. Box 4200, Austin, Texas 78765-4200 (Phone: (512) 936-5200); or by email to info@ts-bpe.texas.gov with the subject line "Chapter 367." All comments must be received within 30 days.

Statement of Authority

The rules set forth are proposed under the authority of §1301.251(2) of the Texas Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce said chapter. A concise explanation of the particular statutory or other authority under which this new Chapter 367 is proposed has been made, *supra.,* on a section-by-section basis in discussing the substantive changes imposed by the proposed new Chapter 367 as compared to the existing Chapter 367, the repeal of which is being proposed contemporaneously herewith. No other statute, article, or code is affected by the proposed new Chapter 367.

§367.1. Authority.

(a) The enforcement authority granted to the Board under Chapter 1301 of the Texas Occupations Code, and any associated rules, may be used to enforce the Plumbing License Law, Board Rules, and Board orders.

(b) The enforcement authority granted to municipalities under §1301.503 and §1301.551 of the Texas Occupations Code and to political subdivisions under §1301.255, and any associated rules, may be used to enforce the Plumbing License Law, Board Rules, and applicable municipal ordinances or bylaws and adopted codes.

(c) The enforcement authority granted to licensed Plumbing Inspectors under §§1301.255, 1301.503 and 1301.551 of the Texas Occupations Code, and any associated rules, may be used to enforce the Plumbing License Law, Board Rules, and applicable municipal ordinances or bylaws and adopted codes.

(d) The enforcement authority granted to a Field Representative employed by the Board under §1301.203 of the Texas Occupations Code, and any associated rules, may be used to enforce the Plumbing License Law and Board Rules.

§367.2. Code Requirements.

(a) To protect the health and safety of the citizens of this state, the Board adopts the following plumbing codes:

(1) the 2012 Uniform Plumbing Code, as published by the International Association of Plumbing and Mechanical Officials; and

(2) the 2012 International Plumbing Code, as published by the International Code Council and the codes incorporated by reference within the 2012 International Plumbing Code, including:

(A) the 2012 International Fuel Gas Code; and

(B) the 2012 International Residential Code.

(b) To ensure the proper design, installation, and maintenance of plumbing systems within its jurisdiction, a political subdivision may adopt a plumbing code with any amendments necessary to address local concerns provided that the amendments do not substantially vary with the rules or laws of this state.

(c) Plumbing must be installed in accordance with all applicable plumbing codes adopted by the political subdivision in which the plumbing is being installed.

(1) Plumbing installed by an individual licensed under the PLL in an unincorporated area of the county or other area where no plumbing code has been adopted must be installed in accordance with a plumbing code adopted under subsection (a) of this section.

(2) A plumbing installation that was started prior to the Board's adoption of the plumbing codes listed in subsection (a) of this section may be completed under the requirements of the codes in effect at the time permits for the installation were issued or work on the installation commenced.

(3) In addition to all applicable plumbing codes, Liquefied Petroleum Gas (LP-Gas) piping must be installed in accordance with all applicable rules adopted by the Texas Railroad Commission.

(d) Any piping connecting a plumbing fixture, including a water closet, to a potable water supply shall be installed to prevent the back flow of nonpotable substances into the potable water system in accordance with the applicable plumbing code and state laws. Water closet fill valves (ball cocks) shall be of the antisiphon, integral vacuum breaker type with the critical level (the air inlet portion of the vacuum breaker) installed at least one (1) inch above the flood level rim of the fixture (the inlet of the water closet overflow tube).

(e) Plumbing installed in compliance with a code adopted under subsection (a) or (b) of this section must be inspected by a Plumbing Inspector licensed under the PLL and Board Rule §367.4.

(f) A licensee or registrant shall not install, and a person shall not require a licensee or registrant to install, plumbing that is not in compliance with the Plumbing License Law or any other laws of this state, Board Rules, or any applicable plumbing codes.

§367.3. Standards of Conduct- Licensees and Registrants.

(a) Offer to Perform Services. All licensees and registrants:

(1) shall accurately and truthfully represent to any prospective client or employer, his or her capabilities and qualifications to perform the services to be rendered;

(2) shall not offer to perform, nor perform, technical services for which he or she is not qualified by education or experience, without retaining the services of another who is so qualified;

(3) shall not evade responsibility to a client or employer; and

(4) shall give the customer an invoice or completed contract document on completion of the plumbing job, regardless of whether he or she charged a fee for performing the services.

(5) For the purposes of paragraph (4) of this subsection, the customer is the person to whom the plumbing or technical services were provided even if the services were provided pursuant to a contract with a third party but not limited to a home warranty company, general contractor, or a company established to perform inspections.

(b) Conflicts of Interest. All licensees and registrants:

(1) shall not agree to perform services if any significant financial or other interest exists that would:

(A) conflict with the obligation to render a faithful discharge of such services; or

(B) impair independent judgment in rendering such services;

(2) shall withdraw from employment when it becomes apparent that it is not possible to faithfully discharge the duty and performance of services owed the client or employer, but then only upon reasonable notice to the client or employer; and

(3) shall not accept remuneration from any person other than the client or employer for a particular project, nor have any other financial interest in other service or phase of service to be provided for the project, unless the client or employer has full knowledge and so approves.

(c) Representations. All licensees and registrants:

(1) shall not indulge in advertising that is false, misleading, or deceptive;

(2) shall not misrepresent the amount or extent of prior education or experience to any employer or client;

(3) shall, when providing estimates for costs or completion times of a proposed project, represent to a prospective client or employer as accurately and truthfully as is reasonably possible the costs and completion time of the proposed project; and

(4) shall not hold out as being engaged in partnership or association with any person unless a partnership or association exists in fact.

(d) Compliance with Laws, Rules, Local Ordinances, and Board Orders. All licensees and registrants shall comply fully with:

(1) the Plumbing License Law and all other state laws regulating plumbing work;

(2) all rules adopted by the Board;

(3) all Board orders;

(4) the ordinances, bylaws and other local rules regulating plumbing adopted by a political subdivision; and

(5) when applicable, the plumbing codes adopted by the Board under §367.2(a) of this chapter.

§367.4. Standards of Conduct- Plumbing Inspectors.

(a) In addition to complying with the requirements of §367.3 of this chapter, a Plumbing Inspector shall not:

(1) have any financial, or advisory interest in any plumbing company;

(2) represent or indicate in any manner that the Plumbing Inspector is employed by or a representative of the Board or the State of Texas unless, in fact, the Plumbing Inspector is employed by the Board or the State of Texas.

(b) A Plumbing Inspector shall not perform a plumbing inspection unless and until he or she has submitted proof of affiliation with a political subdivision in a form specified by the Board. An affiliation is established if the inspector is employed by or under contract with a political subdivision to perform plumbing inspections or employed by a qualified plumbing inspection company under contract with a political subdivision to perform plumbing inspections.

(c) A Plumbing Inspector shall only accept compensation for performing a plumbing inspection from the political subdivision with jurisdiction over the jobsite where the inspection is performed or a qualified plumbing inspection business under contract with a political subdivision. A political subdivision may contract with a qualified plumbing inspection business to perform an inspection only if the business utilizes a licensed Plumbing Inspector to perform the inspection. This subsection does not apply to an inspection subject to §1301.255 of the PLL.

(d) A Plumbing Inspector shall consistently and equitably, to all persons enforce the Plumbing License Law, Board Rules, and plumbing codes adopted under §367.2(a) of this chapter, and all local ordinances regulating plumbing codes adopted by the political subdivision(s) within the Plumbing Inspector's jurisdiction.

(e) A Plumbing Inspector shall include his or her Plumbing Inspector License number on any document produced in connection with an inspection, including but not limited to:

(1) a green tag or other document used to show plumbing work has passed inspection.

(2) a notice of correction or other document used to show plumbing work has failed inspection; or

(3) any correspondence, including but not limited to emails.

§367.5. Responsibilities of RMP-General.

(a) In addition to obtaining the certificate of insurance required by §367.6 of this chapter, a Master Plumber shall complete the training program required by §363.26 of the Board Rules in order to initially qualify as a RMP. This subsection does not apply to a Master Plumber who meets the requirements of §363.26(a) of the Board Rules.

(b) A Master Plumber may act as the RMP of record for only one person at a time. A RMP wishing to be removed or added as a RMP of record shall submit to the Board written notification of the change, in a form specified by the Board, within ten (10) business days after the effective date of the change.

(c) The RMP of record shall be knowledgeable of and responsible for all contracts and agreements to perform plumbing work secured and permits obtained under his or her Master Plumber License. A RMP of record is not absolved of these responsibilities even if:

(1) the job of obtaining a permit is delegated to another person; or

(2) the RMP did not personally draft or sign the contract or agreement.

(d) The RMP of record is responsible for the general supervision and management of plumbing work performed under his or her license and individuals performing plumbing work pursuant to contracts secured under his or her license, regardless of whether the individuals are employees or subcontractors. This includes:

(1) ensuring that all permits are obtained and inspections are requested in accordance with all applicable plumbing codes;

(2) ensuring that all individuals performing plumbing work under the RMP's license hold a current applicable license or registration for the work being performed;

(3) ensuring that a licensee is present and providing direct supervision at all job sites where one or more registrants are engaged in plumbing; and

(4) ensuring that all service vehicles display the information required by §367.10 of this chapter.

(e) A RMP acting in accordance with subsection (d) of this section has fulfilled his or her responsibility to the client and employer to ensure that the plumbing work performed under the RMP's license will protect public health and safety by meeting the requirements of all applicable plumbing local and state codes, ordinances, rules regulations and laws regulating plumbing.

§367.6. Responsibilities of RMP-Insurance Required.

(a) A Responsible Master Plumber shall at all times maintain insurance that:

(1) meets the requirements set forth in §1301.552 of the PLL; and

(2) includes coverage for all types of plumbing that will be performed under the RMP's license, including, but not limited to:

(A) LP-Gas plumbing;

(B) medical gas plumbing; and

(C) multipurpose residential fire protection sprinkler systems.

(b) A Master Plumber may not act as a RMP of record unless the Master Plumber has uploaded to the RMP's online account a valid certificate of insurance form approved by the Board.

(c) Upon written request, the RMP or owner of the plumbing company shall furnish the name of the insurance carrier and name, address, and telephone number of the insurance agent with whom the RMP is insured to any customer within 30 days of the request. For the purposes of this subsection, the customer is the person to whom the plumbing services were provided even if the services were provided pursuant to a contract with a third party but not limited to a home warranty company, general contractor, or a company established to perform inspections.

§367.7. Responsibilities of RMP-Medical Gas Piping Systems.

(a) A person may not offer to install pipe used solely to transport gases for medical purposes unless the person has secured the services, in accordance with §367.9(b) of this chapter, of at least one RMP who holds a current Master Plumber License with a current Medical Gas Piping Installation Endorsement issued by the Board.

(b) The RMP with the Medical Gas Piping Installation Endorsement shall be responsible for the general supervision of the installation and ensuring that:

(1) all pipe used solely to transport gases for medical purposes is installed by the company; and

(2) all medical gas pipe assembly, brazing, and installation of required pipe markings is performed only by a licensee who holds a current Medical Gas Piping Installation Endorsement issued by the Board.

§367.8. Responsibilities of RMP-Multipurpose Residential Fire Protection Sprinkler Systems.

(a) A person may not offer to install a multipurpose residential fire protection sprinkler system unless the person has secured the services, in accordance with §367.9(b) of this chapter, of at least one RMP who holds a current Master Plumber License with a current Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement issued by the Board.

(b) The RMP with the Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement shall be responsible for the general supervision of the installation and ensuring that:

(1) the system is installed by a licensed Journeyman or Master Plumber with a current Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement;

(2) any other person who assists with the installation of a multipurpose residential fire protection sprinkler system is registered or licensed by the Board and is assisting only under the direct supervision of the endorsement holder who is on the job installing the system;

(3) the system has been designed by a licensed Master Plumber with a current Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement; and

(4) the system is installed, tested and inspected in accordance with the requirements of the latest edition of the National Fire Protection Association (NFPA) standard 13D and all applicable local ordinances and state laws and rules regulating the installation of multipurpose residential fire protection sprinkler systems.

(c) Upon final completion of the installation, the RMP with the Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement shall be responsible for ensuring that:

(1) the owner of the system has been provided:

(A) documentation that includes the RMP's name, license number, company name and contact information;

(B) a copy of the plans or drawings of the system, as installed; and

(C) instructions for the operation, maintenance and care of the system, in accordance with the latest edition of NFPA standard 13D and the material manufacturers' recommendations.

(2) a warning sign is affixed in a visible location that is adjacent to the main shutoff valve; and

(3) that the warning sign:

(A) is typed in a font size of at least 1/4 inch;

(B) identifies the RMP as the installer and includes the RMP's name, license number, company name and contact information;

(C) states, "WARNING: The water system for this home is a multipurpose system which supplies water to fire sprinklers that require certain flows and pressures to fight a fire. Devices that restrict the flow or decrease the pressure or automatically shut off the water to the fire sprinkler system, such as water softeners, filtration systems, and automatic shutoff valves, shall not be added to this system without a review of the fire sprinkler system by a fire protection sprinkler specialist. DO NOT REMOVE THIS SIGN"; and

(D) includes the Board's name and telephone number at the bottom.

(d) A Master Plumber who holds a Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement and designs a multipurpose residential fire protection sprinkler system must obtain a seal.

(1) The Master Plumber with the endorsement is responsible for the security of the seal.

(2) The seal shall:

(A) be in the shape of a circle that is at least one and one half inch in diameter;

(B) include words, "State of Texas" at the top of the seal;

(C) include the words, "Licensed Master Plumber" at the bottom of the seal; and

(D) include the name and license number of the Master Plumber with the endorsement positioned horizontally in the center of the seal.

(3) The seal must be clearly and legibly affixed to each original plan designed by the Master Plumber with the endorsement, and each copy of the plan.

(4) The Master Plumber with the endorsement must sign and date the plan below the affixed seal.

(5) By affixing the seal and signing the plan, the Master Plumber with the endorsement assumes responsibility for ensuring that the system as designed meets the requirements of the latest edition of the NFPA standard 13D and all applicable local ordinances and state laws and rules regulating the installation of multipurpose residential fire protection sprinkler systems.

§367.9. Advertising; Offering to Perform Plumbing.

(a) A person shall not advertise, contract for or otherwise offer or agree to perform plumbing work for or provide plumbing services to the public unless the person has secured the services of at least one RMP holding a current Master Plumber License.

(b) A person has secured the services of a RMP if:

(1) the RMP is an employee of the person; or

(2) the RMP is the owner of the plumbing company that will contract for and perform plumbing work under his or her license.

(c) Notwithstanding subsection (b) of this section, a licensee who contracts for or otherwise agrees to perform plumbing work is not in violation of §1301.351(a-2) of the PLL if the licensee has a written subcontracting agreement with a person who has secured the services of a RMP in accordance with subsection (b) of this section.

(d) The agreement required in subsection (c) of this section shall:

(1) be signed by the licensee contracting for, or otherwise offering to perform plumbing and the RMP of record for the plumbing company that will perform the plumbing work;

(2) provide a description of all plumbing work to be performed pursuant to the agreement;

(3) include the price for all plumbing work to be performed; and

(4) contain the information required under §1301.302 of the PLL and §367.10 of this chapter.

§367.10. Display of RMP Name and License Number.

(a) The RMP of record shall display his or her certificate of licensure in his or her place of business in a conspicuous location.

(b) Both the RMP of record and owner of a plumbing company shall ensure that the RMP's license number and the company name are permanently displayed on both sides of all service vehicles owned or operated by the RMP or the company and used in conjunction with plumbing work.

(1) For the purposes of this subsection, a magnetic sign is not a permanent sign.

(2) The letters and numbers shall be at least two (2) inches high and shall be in a color sufficiently different from the body of the vehicle so that the letters and numbers shall be plainly legible at a distance of not less than one hundred (100) feet.

(c) Both the RMP of record and owner of a plumbing company shall ensure that the first page of each written or electronic proposal, invoice or contract for plumbing services includes, in at least twelve (12) point font:

(1) the first and last name of the RMP of record;

(2) the license number of the RMP of record;

(3) the words "regulated by the Texas State Board of Plumbing Examiners"; and

(4) the Board's mailing address and telephone number.

(5) For the purposes of this subsection, the terms "proposal", "invoice" and "contract" include any and all documents used to define the scope and cost of the work to be performed for a consumer. This would include items such as service invoices, billing invoices, receipts or any document written or electronic which defines the services and cost of the plumbing services provided to the consumer. The consumer need not sign the document for it to be considered a contract.

(d) Both the RMP of record and owner of a plumbing company shall ensure that all advertisements for plumbing services, regardless of the type of media used, clearly display or verbally state the company name and license number of the RMP of record.

(1) For the purposes of this subsection, the term media includes but is not limited to:

(A) newspapers;

(B) telephone directories;

(C) printed materials such as flyers and other handouts;

(D) business cards;

(E) signs and billboards;

(F) radio;

(G) television; and

(H) the Internet.

(2) For the purposes of this subsection, uniforms or other clothing displaying a plumbing company name or logo and a sign affixed to the contractor's permanent business location are not considered an advertisement.

§367.11. License or Registration Required.

(a) An individual shall not engage in plumbing work requiring a license, registration or endorsement under the Plumbing License Law without a current license, registration or endorsement issued by the Board.

(b) An individual shall not perform a plumbing inspection without a current affiliated Plumbing Inspector License issued by the Board.

(c) A person shall not employ or enter into a subcontract with an individual to engage in plumbing work requiring a license, registration or endorsement under the Plumbing License Law if the individual does not hold the appropriate license, registration or endorsement required for the type of work performed.

(d) A political subdivision shall not employ or contract a person who does not hold a Plumbing Inspector License issued by the Board currently affiliated with that political subdivision having jurisdiction or contract with a person who does not employ at least one licensed Plumbing Inspector to perform plumbing inspections.

(e) A person shall not use the certificate of licensure, pocket card or license or registration number of another licensee or registrant.

(f) Licensees and registrants shall not allow another person to use their certificate of licensure, pocket card or license or registration number.

§367.12. On-Site License and Registration Checks.

(a) A licensee or registrant shall carry his or her pocket card at all times he or she is present at a jobsite or engaged in plumbing work.

(b) A licensee or registrant shall cooperate with a Field Representative conducting a check in accordance with this section.

(c) Pursuant to the authority granted under §1301.259 of the Plumbing License Law, an enforcement officer employed by the Texas Department of Licensing and Regulation may also check licenses and registrations and report non-compliance to the Board.

(d) In addition to initiating disciplinary actions against unlicensed or unregistered individuals or those without a current license or registration, the Board may refer non-compliant individuals to local authorities for enforcement and disposition.

§367.13. Filing Complaints.

(a) The Board shall only accept a complaint that is submitted in writing in a format specified by the Board.

(b) A complaint may be submitted via mail, electronic mail, facsimile or in person.

(c) A complaint shall contain:

(1) the complainant's name and contact information;

(2) a description of the alleged violation;

(3) the name of the municipality and all other political subdivisions in which the conduct that is the subject of the complaint occurred;

(4) the name and contact information of any known witnesses or other sources of pertinent information; and

(5) any evidence in the possession of the complainant, including but not limited to:

(A) estimates, contracts or invoices;

(B) cancelled checks;

(C) photographs of any plumbing work that is the subject of the complaint;

(D) written communications between the complainant and respondent; and

(E) websites, business cards, or other advertisements used by the respondent.

(d) For the purposes of subsection (c) of this section, contact information may include, but is not limited to, name, address, telephone number, email address, business name, business address, business telephone number, and website.

(e) The Director of Enforcement may refuse to accept a complaint that does not contain sufficient information to determine whether the Board has jurisdiction over the complaint.

(f) The Board may accept anonymous complaints. Anonymous complaints may not be investigated if insufficient information is provided, the allegations are vague, appear to lack factual foundation, or cannot be proved for lack of a witness or other evidence.

§367.14. Processing Complaints.

(a) The Director of Enforcement shall review a complaint submitted in accordance with §367.13 of this chapter to determine whether the Board had jurisdiction.

(b) If it is determined that a complaint is within the Board's jurisdiction the Director of Enforcement shall:

(1) assign a complaint number; and

(2) appoint a Field Representative to investigate the complaint.

(c) If it is determined that a complaint is not within the Board's jurisdiction, the Director of Enforcement shall notify the complainant in writing.

§367.15. Investigating Complaints.

(a) The Board may open a complaint investigation on its own initiative.

(b) The Board may utilize its Field Representatives, Director of Enforcement or Enforcement Committee, as appropriate, to investigate an alleged violation of the Plumbing License Law or Board Rules by a person who:

(1) is registered or licensed under the Plumbing License Law;

(2) is the owner of a company subject to the PLL;

(3) performs plumbing without holding a registration or license under the PLL; or

(4) advertises or otherwise offers to perform plumbing work without holding a license under the PLL.

(c) Complaints shall be investigated in the order they are received by the agency unless the Director of Enforcement assigns a higher priority to a complaint based on:

(1) an existing condition that poses an immediate risk to public health, safety or property; or

(2) the possible loss of evidence that may occur if the complaint is investigated only in relation to the order that it was received.

(d) Licensees and registrants shall cooperate with the Board and its Field Representatives during the investigation of a complaint.

(e) The Director of Enforcement shall maintain an electronic or hard copy case file for each written complaint alleging a violation of the Plumbing License Law or Board Rules filed with the Board. The files are subject to the agency's record retention schedule and must include:

(1) the source of the complaint;

(2) the complaint and all documents submitted under §367.13(c)(5) of this chapter;

(3) the date the complaint is received by the agency;

(4) the evidence collected during the investigation of the complaint;

(5) the geographic area, including the name of any municipality and the county in which the conduct that is the subject of the complaint occurred;

(6) the name of each person contacted in relation to the complaint;

(7) a summary of the results of the review or investigation of the complaint; and

(8) an explanation of the reason the file was closed, if the agency closed the file without taking action other than to investigate the complaint.

(f) The Director of Enforcement shall review the statistical information available in the complaint files described in subsection (e) of this section to identify geographical problem areas of the state where enforcement should be focused and make recommendations to the Enforcement Committee and the Executive Director for addressing the problems utilizing the resources available to the agency.

(g) Following the investigation of a complaint, the Director of Enforcement shall refer the findings of the investigation with recommendations for disposition of the complaint to the Enforcement Committee.

§367.16. Enforcement Committee; Complaint Review.

(a) The Enforcement Committee shall pursue expeditious resolution of complaints by voluntary agreed settlement, whenever appropriate.

(b) The Enforcement Committee may close a complaint if it concludes:

(1) the Board lacks jurisdiction over the complaint;

(2) no violation of the PLL, Board Rules or a Board order has occurred;

(3) there is insufficient evidence of a violation; or

(4) the respondent has voluntarily come into compliance with the PLL, Board Rules, or Board order.

(c) The Enforcement Committee may close a complaint and issue a warning if:

(1) it concludes that a violation may have occurred;

(2) the respondent has not received any prior warnings; and

(3) the respondent has not committed a previous violation of the PLL, Board Rules or Board orders.

(d) If the Enforcement Committee determines that a violation of the PLL, Board Rules or a Board order has occurred, it may recommend:

(1) issuing a Cease and Desist Order pursuant to §1301.5045 of the PLL;

(2) imposing an administrative penalty pursuant to Subchapter N of the PLL;

(3) suspending, revoking or refusing to renew the respondent's license, endorsement or registration pursuant to §1301.451 and §1301.452 of the PLL;

(4) reprimanding the respondent pursuant to §1301.451 and §1301.452 of the PLL; or

(5) pursuing any other disciplinary action allowed under the Plumbing License Law and Board Rules that justice may require.

(e) The Enforcement Committee may offer an informal conference to a respondent, in accordance with the requirements of the Administrative Procedure Act, if it will assist the committee with determining:

(1) whether a violation occurred;

(2) the seriousness or the effect of a violation;

(3) the most appropriate disciplinary action;

(4) whether to offer a settlement agreement; or

(5) the amount of restitution to be paid by a respondent pursuant to §1301.5071 of the Plumbing License Law, instead of, or in addition to other disciplinary actions.

§367.17. Administrative Penalty.

(a) If the Enforcement Committee decides to pursue an administrative penalty, a Notice of Alleged Violation must be issued to the Respondent. This notice will include a brief summary of the alleged

violation, state the amount of the administrative penalty pursued, and inform the Respondent of the Respondent's right to a hearing before the State Office of Administrative Hearings on the occurrence of the violation or the amount of the penalty. There is a rebuttable presumption that the notice is received three (3) days after it was mailed.

(b) Not later than the 20th day after the Notice of Alleged Violation is received by the Respondent, the Respondent, in writing, must:

(1) agree to settle the matter without a formal hearing before the State Office of Administrative Hearings and accept the determination and settlement penalty recommended by the Enforcement Committee; or

(2) make a request for a formal hearing before the State Office of Administrative Hearings on the occurrence of the violation, the amount of the penalty, or both.

(c) If, within twenty (20) days of receipt, the Respondent fails to respond to the Notice of Alleged Violation and either accept the Enforcement Committee's determination and recommended administrative penalty, sanction, or both, or make a written request for a hearing on the determination, the Enforcement Committee may propose entry of a default order against the Respondent unless otherwise provided by applicable law.

(d) Where the Respondent fails to answer to the Notice of Alleged Violation, the Enforcement Committee may present to the Board a proposed Default Order containing findings of fact and conclusions of law. The Board may grant the relief recommended in the proposed Default Order, or such other relief as may be justified by the evidence presented by the Enforcement Committee.

(e) If the Respondent agrees to settle the matter without a formal hearing and accepts the determination and amount of penalty recommended by the Enforcement Committee, the Respondent must pay the penalty to the Board according to an agreed schedule, or if there is no agreed schedule, not later than sixty (60) days following the date that the Notice of Alleged Violation was issued.

(f) The Enforcement Committee must report the proposed agreement to the Board stating a summary of the facts or allegations against the Respondent and the amount of the recommended administrative penalty. The Board may approve the proposed agreement and its recommended penalty by order. If the Respondent subsequently violates the Board's Order adopting the agreement between the Respondent and the Enforcement Committee by failing to pay the penalty timely, the Board may:

(1) refuse to renew the Respondent's license or registration;

(2) refuse to issue a new license or registration to the Respondent, under §1310.451 of the Plumbing License Law;

(3) revoke the Respondent's license or registration; and

(4) may sue the Respondent to collect the penalty owed under §1301.712 of the Plumbing License Law.

(g) The Enforcement Committee must set a formal hearing on the matter as a contested case before an administrative law judge at the State Office of Administrative Hearings if:

(1) the Respondent requests a formal hearing as required by subsection (b)(2) of this section;

(2) the parties do not agree to settle the matter as stated in subsection (e) of this section;

(3) the Board declines to approve the proposed agree in subsection (f) of this section; or

(4) the Respondent attends at the time and place prescribed in the notice required by subsection (d) of the section.

(h) Following the hearing, the administrative law judge must issue a proposal for decision to the Board containing findings of facts and conclusions of law. While the administrative law judge may recommend a sanction, findings of fact and conclusions of law are inappropriate for sanction recommendations, and sanction recommendations in the form of findings of fact and conclusions of law are an improper application of applicable law and these rules. Sections 1301.451, 1301.701, and 1301.706 of the Plumbing License Law provide that the Board must impose the appropriate sanction. In all cases, the Board has the discretion to impose the sanction that best accomplishes the Board's legislatively-assigned enforcement goals. The Board is the ultimate arbiter of the proper penalty.

(i) The Board may impose an administrative penalty alone or in addition to other sanctions permitted under the Plumbing License Law.

(j) In determining the proper administrative penalty, the Board will apply the factors to be considered set forth in §1301.702(b) of the Plumbing License Law.

(k) The following table contains guidelines for the assessment of administrative penalties in disciplinary matters. This table is for standard violations under normal circumstances and does not necessarily include every possible violation of the Plumbing License Law or Board Rules. The table is divided into two classes of violations. Class A violations are those violations with greater potential to jeopardize public health, safety, welfare, property, or environment. Class B violations are those with less immediate potential to jeopardize public health, safety, welfare, property, or environment.
Figure: 22 TAC §367.17(k)

(l) The amounts specified in the table in subsection (k) of this section are guidelines only. The Board retains the right to increase or decrease the amount of an administrative penalty based on the circumstances in each case. In particular, the Board may increase the amount of administrative penalties when the Respondent has committed multiple violations (e.g., some combination of different violations).

(m) Because it is the policy of the Board to pursue expeditious resolution of complaints when appropriate, administrative penalties in uncontested cases may be less than the amounts specified in the table in subsection (k) of this section. Among other reasons, this may be because the Respondent admits fault, takes steps to rectify matters, timely responds to Board concerns, or identifies mitigating circumstances, and because settlements avoid additional administrative costs to the Board.

(n) The cost of preparing the transcript of an administrative hearing is not an administrative penalty. Yet in all cases where the Board has determined that a violation occurred, the Board assesses the cost of the transcript of the administrative hearing to the Respondent.

(o) Based on the proposal for decision, including the findings of fact and conclusions of law, the Board must issue an Order stating its decision in the contested case and a notice to the Respondent of the Respondent's right to judicial review of the Order.

(p) When the Default Order adopted under subsection (d) of this section or the Order adopted under subsection (o) of this section includes the imposition of an administrative penalty:

(1) not later than the 30th day after the date that the Default Order or Order becomes final:

(A) the Respondent must pay the penalty to the Board; or

(B) the Respondent must file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both, in accordance with §1301.707 or §1301.708 of the Plumbing License Law.

(2) after all opportunities for judicial review have passed and it is determined that the Respondent owes the penalty and fails to pay the penalty timely:

(A) the Board is authorized to refuse to renew the Respondent's license or registration and refuse to issue a new license or registration to the Respondent, under §1301.707 of the Plumbing License Law; and

(B) the Attorney General may sue the Respondent to collect the penalty under §1301.712 of the Plumbing License Law.

§367.18. Reprimand; Probation; Suspension; Revocation.

(a) In accordance with §1301.452 of the PLL, upon a determination that a violation of the PLL, an order issued by the board, or a board rule has occurred, the Board, pursuant to §1301.451 of the PLL, shall revoke, suspend, or refuse to renew a license, endorsement, or registration or shall reprimand a holder of a license or registration.

(b) For the purposes of this section, a reprimand means any disciplinary action, other than the probation, suspension or revocation of a license, endorsement or registration.

(c) A person whose license, endorsement, or registration has been revoked pursuant to this section may not apply for a new license, endorsement, or registration before one year from the date of final revocation.

(d) The Board may place on probation a person whose license, endorsement, or registration is suspended. If a license, endorsement, or registration suspension is probated, the board may require the person:

(1) to report regularly to the agency on matters that are the basis of the probation;

(2) to limit practice to the areas prescribed by the board; or

(3) to continue or review professional education until the person attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

(e) If the Enforcement Committee or the Board determines that probation is appropriate to deter future violations of the Plumbing License Law and Board Rules by the respondent, probation shall be administered consistently under the following guidelines:

(1) for violations with greater potential to jeopardize public health, safety, welfare, property, or environment (as listed in the Board's Administrative Penalty Schedule for Class A violations), the term of the probation may not be less than one year or more than five years; and

(2) for violations with less potential to jeopardize public health, safety, welfare, property, or environment (as listed in the Board's Administrative Penalty Schedule for Class B violations), the term of the probation may not be less than six months or more than one year.

(f) Probation by voluntary agreed settlement between a respondent and the Enforcement Committee may meet such terms that both parties deem fair and which in the interest of justice may require.

§367.19. Failure to Request a Hearing After Notice of Intent to Deny or Revoke.

(a) If the Enforcement Committee proposes to deny an application for examination or registration or revoke or suspend a license, registration, or endorsement, pursuant to §1301.451 of the Plumbing License Law, the Enforcement Committee shall give timely written notice of the denial or revocation to the applicant to the last known address provided to the Board by the applicant.

(b) The language of the notice shall include:

(1) a summary of the allegations against the applicant;

(2) the applicant's right to be represented by an attorney on the matter;

(3) the applicant's right to request a hearing on the matter before SOAH;

(4) the applicant's request for a hearing must be made no later than twenty (20) days after the receipt of the notice; and

(5) the applicant's failure to request a hearing within twenty (20) days after the receipt of the notice results in the Enforcement Committee's decision to deny or revoke becoming final and judicial appeal of the denial or revocation being waived by the applicant.

(c) Any individual whose application for examination or registration has been denied or whose license, registration or endorsement has been revoked may re-apply to the Board after a waiting period of at least one year from the date that the denial or revocation became final. The Enforcement Committee shall be delegated the authority of making the initial review of the re-application. If the Committee decides to deny the re-application it shall proceed as defined in subsection (a) of this section.

(d) If the committee makes a decision to approve the applicant's request, it must be presented for approval before the Board members, at a regularly scheduled Board meeting to approve the applicant's request, if approved, then the applicant is to follow the same licensing or registration procedures required of a first-time licensee or registrant.

§367.20. Informal Conference; Violation of Law, Rule or Board Order.

(a) In addition to the respondent, the Enforcement Committee may invite the complainant or a third party with information relevant to the investigation to attend an informal conference.

(b) Not less than ten (10) days prior to the informal conference, the Director of Enforcement shall provide the respondent with a written notice informing the respondent:

(1) of the date, time, and location of the informal conference;

(2) that the respondent's participation is voluntary

(3) that the respondent's participation it not a prerequisite to a formal hearing;

(4) that the respondent may be represented by legal counsel;

(5) the nature of the alleged violation; and

(6) the names of any other individual invited to attend the conference.

(c) If the informal conference results in the Enforcement Committee and the respondent entering into an agreed settlement that includes restitution payments, action on the respondent's license or registration, the payment of an administrative penalty or any other disciplinary action permitted by law, or combination of disciplinary actions, the Committee shall prepare an Agreed Final Order to be presented to the Board for adoption.

(d) If the informal conference fails to result in an agreed settlement, the Enforcement Committee shall set a formal hearing on the

matter as a contested case at SOAH if the respondent requests a hearing.

§367.21. Contested Case; State Office of Administrative Hearings.

(a) A contested case shall mean any action that is referred by the Enforcement Committee or the Board to SOAH.

(b) Respondent means:

(1) a person in a contested case charged with a violation of the Plumbing License Law or Board Rules; or

(2) an applicant who has been denied a license, registration or endorsement by the Enforcement Committee.

(c) The Board shall provide for a hearing at SOAH, when requested by a respondent, after issuing a formal complaint that:

(1) charges an individual with any violation of the Plumbing License Law or Board Rules; or

(2) would prevent an otherwise qualified individual from obtaining an initial registration, renewing a license, registration, or endorsement, or taking an examination.

(d) The Board shall conduct the hearing in accordance with all applicable provisions of the:

(1) Administrative Procedure Act;

(2) State Office of Administrative Hearings Rules;

(3) Plumbing License Law; and

(4) Board Rules.

(e) The Board may serve the notice of hearing on the respondent at his or her last known address as shown by the Board's records.

§367.22. Failure to Attend Hearing and Default.

(a) Default. If the party who does not have the burden of proof fails to appear at a contested case hearing at the State Office of Administrative Hearings (SOAH), the administrative law judge must issue a default proposal for decision that can be adopted by the Board.

(b) Failure to issue default proposal for decision. If the administrative law judge grants a default but does not issue a default proposal for decision and instead issues a default order dismissing the case and returning the file to the Plumbing Board for informal disposition on a default basis in accordance with §2001.056 of the Texas Government Code, the Board may issue a final order deeming the allegations in the complaint as true and imposing the sanctions requested in the complaint.

(c) Failure to prosecute: If an applicant for licensure fails to appear at a contested case hearing at the SOAH, the administrative law judge must dismiss the case for want of prosecution, any relevant application will be withdrawn, and the Board may not consider a subsequent application from the party until the first anniversary of the date of dismissal of the case at SOAH. If the administrative law judge dismisses the case and returns the file to the board for informal disposition on a default basis in accordance with §2001.056 of the Texas Government Code, the Board will issue a final order referring to this rule and advising the applicant that his or her application was withdrawn and that he or she may reapply for licensure one year after the date of the dismissal of the case at the SOAH.

(d) Applicants for licensure bear the burden to prove fitness for licensure.

(e) Contesting a final order issued following a default or dismissal for failure to prosecute. In the event that the respondent wishes to contest a final order issued following a default or dismissal for failure to prosecute, the respondent must timely file a motion for rehearing as provided by Chapter 2001 of the Texas Government Code and this motion must show the following:

(1) the failure to timely file a written answer or appear at the SOAH hearing was caused by fraud, accident, or wrongful act or mistake of the Board;

(2) the failure to timely file a written answer or appear at the SOAH hearing was not the result of respondent's fault or negligence nor of respondent's representative if any;

(3) the respondent has a meritorious defense; and

(4) the motion for rehearing must be supported by affidavits and documentary evidence of the above and show a prima facie case for a meritorious defense.

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 April 10, 2018.

TRD-201801542
Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
Earliest possible date of adoption: May 27, 2018
For further information, please call: (800) 845-6584

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §4.11

The Texas Department of Public Safety (the department) proposes amendments to §4.11, concerning General Applicability and Definitions. The proposed amendments are necessary to harmonize updates to 49 Code of Federal Regulations with those laws adopted by Texas. Additionally, the registration threshold was removed from the applicability standard for intrastate purposes. Registration has no safety component and removing this language makes it consistent with language in commercial driver license law in Transportation Code, §522.003 and federal regulations in 49 CFR Part 390.5 and Part 383.5.

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

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

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

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be maximum efficiency of the Motor Carrier Safety Assistance Program.

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

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

Pursuant to Texas Government Code, §2001.0221, the department has prepared a Government Growth Impact Statement and determined for each year of the first five-year period the rule is in effect, the proposed rule will decrease the number of individuals subject to the rules applicability and positively affect the State of Texas' economy.

The Texas Department of Public Safety, in accordance with the Administrative Procedures Act, Texas Government Code, §2001, et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on Tuesday, May 15, 2018, at 10:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to Administrative Rule §4.11 regarding General Applicability and Definitions, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Chris Nordloh at (512) 424-2775 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2775. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

Texas Transportation Code, §644.051 is affected by this proposal.

§4.11. General Applicability and Definitions.

(a) General. The director of the Texas Department of Public Safety incorporates, by reference, the Federal Motor Carrier Safety Regulations, Title 49, Code of Federal Regulations, Parts 40, 380, 382, 385 - 387 [~~385,~~ ~~386,~~ ~~387~~], 390 - 393, and 395 - 397 including all interpretations thereto, as amended through June [~~January~~] 1, 2018. All other references in this subchapter to the Code of Federal Regulations also refer to amendments and interpretations issued through June [~~January~~] 1, 2018. The rules detailed in this section [~~adopted herein are to~~] ensure [~~that~~]:

(1) a commercial motor vehicle is safely maintained, equipped, loaded, and operated;

(2) the responsibilities imposed on a commercial motor vehicle's operator do not impair the operator's ability to operate the vehicle safely;

(3) the physical condition of a commercial motor vehicle's operator enables the operator to operate the vehicle safely;

(4) commercial motor vehicle operators are qualified, by reason of training and experience, to operate the vehicle safely; and

(5) the minimum levels of financial responsibility for motor carriers of property or passengers operating commercial motor vehicles in interstate, foreign, or intrastate commerce is maintained as required.

(b) Terms. Certain terms, when used in the federal regulations as adopted in subsection (a) of this section, will be defined as follows:

(1) the definition of motor carrier will be the same as that given in Texas Transportation Code, §643.001(6) when vehicles operated by the motor carrier meet the applicability requirements of subsection (c) of this section;

(2) hazardous material shipper means a consignor, consignee, or beneficial owner of a shipment of hazardous materials;

(3) interstate or foreign commerce will include all movements by motor vehicle, both interstate and intrastate, over the streets and highways of this state;

(4) department means the Texas Department of Public Safety;

(5) director means the director of the Texas Department of Public Safety or the designee of the director;

(6) FMCSA field administrator, as used in the federal motor carrier safety regulations, means the director of the Texas Department of Public Safety for vehicles operating in intrastate commerce;

(7) farm vehicle means any vehicle or combination of vehicles controlled and/or operated by a farmer or rancher being used to transport agriculture commodities, farm machinery, and farm supplies to or from a farm or ranch;

(8) commercial motor vehicle has the meaning assigned by Texas Transportation Code, §548.001(1) if operated intrastate; com-

mercial motor vehicle has the meaning assigned by Title 49, Code of Federal Regulations, Part 390.5 if operated interstate;

(9) foreign commercial motor vehicle has the meaning assigned by Texas Transportation Code, §648.001;

(10) agricultural commodity is defined as an agricultural, horticultural, viticultural, silvicultural, or vegetable product, bees and honey, planting seed, cottonseed, rice, livestock or a livestock product, or poultry or a poultry product that is produced in this state, either in its natural form or as processed by the producer, including wood chips. The term does not include a product which has been stored in a facility not owned by its producer;

(11) planting and harvesting seasons are defined as January 1 to December 31;

(12) producer is defined as a person engaged in the business of producing or causing to be produced for commercial purposes an agricultural commodity. The term includes the owner of a farm on which the commodity is produced and the owner's tenant or sharecropper; and

(13) off-road motorized construction equipment includes but is not limited to motor scrapers, backhoes, motor graders, compactors, excavators, tractors, trenchers, bulldozers, and other similar equipment routinely found at construction sites and that is occasionally moved to or from construction sites by operating the equipment short distances on public highways. Off-road motorized construction equipment is not designed to operate in traffic and such appearance on a public highway is only incidental to its primary functions. Off-road motorized construction equipment is not considered to be a commercial motor vehicle as that term is defined in Texas Transportation Code, §644.001.

(14) The phrase "The commercial driver's license requirements of part 383 of this subchapter" as used in Title 49, Code of Federal Regulations, §382.103(a)(1) shall mean the commercial driver's license requirements of Texas Transportation Code, Chapter 522.

(15) For purposes of removal from safety-sensitive functions for prohibited conduct as described in Title 49, Code of Federal Regulations, Part 382.501(c), commercial motor vehicle means a vehicle subject to the requirements of Texas Transportation Code, Chapter 522 and a vehicle subject to §4.22 of this title (relating to Contract Carriers of Certain Passengers), in addition to those vehicles enumerated in Title 49, Code of Federal Regulations, Part 382.501(c).

(c) Applicability.

(1) The regulations are [~~shall be~~] applicable to the [~~following~~] vehicles detailed in this paragraph:

(A) a vehicle or combination of vehicles with an actual gross weight[~~, a registered gross weight,~~] or a gross weight rating in excess of 26,000 pounds when operating intrastate;

(B) a farm vehicle or combination of farm vehicles with an actual gross weight[~~, a registered gross weight,~~] or a gross weight rating of 48,000 pounds or more when operating intrastate;

(C) a vehicle designed or used to transport more than 15 passengers, including the driver;

(D) a vehicle transporting hazardous material requiring a placard;

(E) a motor carrier transporting household goods for compensation in intrastate commerce in a vehicle not defined in Texas Transportation Code, §548.001(1) is subject to the record keeping requirements in Title 49, Code of Federal Regulations, Part 395 and the hours of service requirements specified in this subchapter;

(F) a foreign commercial motor vehicle that is owned or controlled by a person or entity that is domiciled in or a citizen of a country other than the United States; and

(G) a contract carrier transporting the operating employees of a railroad on a road or highway of this state in a vehicle designed to carry 15 or fewer passengers.

(2) The regulations contained in Title 49, Code of Federal Regulations, Part 392.9a, and all interpretations thereto, are applicable to motor carriers operating exclusively in intrastate commerce and to the intrastate operations of interstate motor carriers that have not been federally preempted by the United Carrier Registration Act of 2005. The term "operating authority" as used in Title 49, Code of Federal Regulations, Part 392.9a, for the motor carriers described in this paragraph, shall mean compliance with the registration requirements found in Texas Transportation Code, Chapter 643. For purposes of enforcement of this paragraph, peace officers certified to enforce this chapter, shall verify that a motor carrier is not registered, as required in Texas Transportation Code, Chapter 643, before placing a motor carrier out-of-service. Motor carriers placed out-of-service under Title 49, Code of Federal Regulations, Part 392.9a may request a review under §4.18 of this title (relating to Intrastate Operating Authority Out-of-Service Review). All costs associated with the towing and storage of a vehicle and load declared out-of-service under this paragraph shall be the responsibility of the motor carrier and not the department or the State of Texas.

(3) All regulations contained in Title 49, Code of Federal Regulations, Parts 40, 380, 382, 385 - 387 [~~385,~~ ~~386,~~ ~~387~~], 390 - 393 and 395 - 397, and all interpretations thereto pertaining to interstate drivers and vehicles are also adopted except as otherwise excluded.

(4) A medical examination certificate, issued in accordance with Title 49, Code of Federal Regulations, Part 391.41, 391.43, and 391.45, shall expire on the date indicated by the medical examiner; however, no such medical examination certificate shall be valid for more than two years from the date of issuance.

(5) Nothing in this section shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee health and safety.

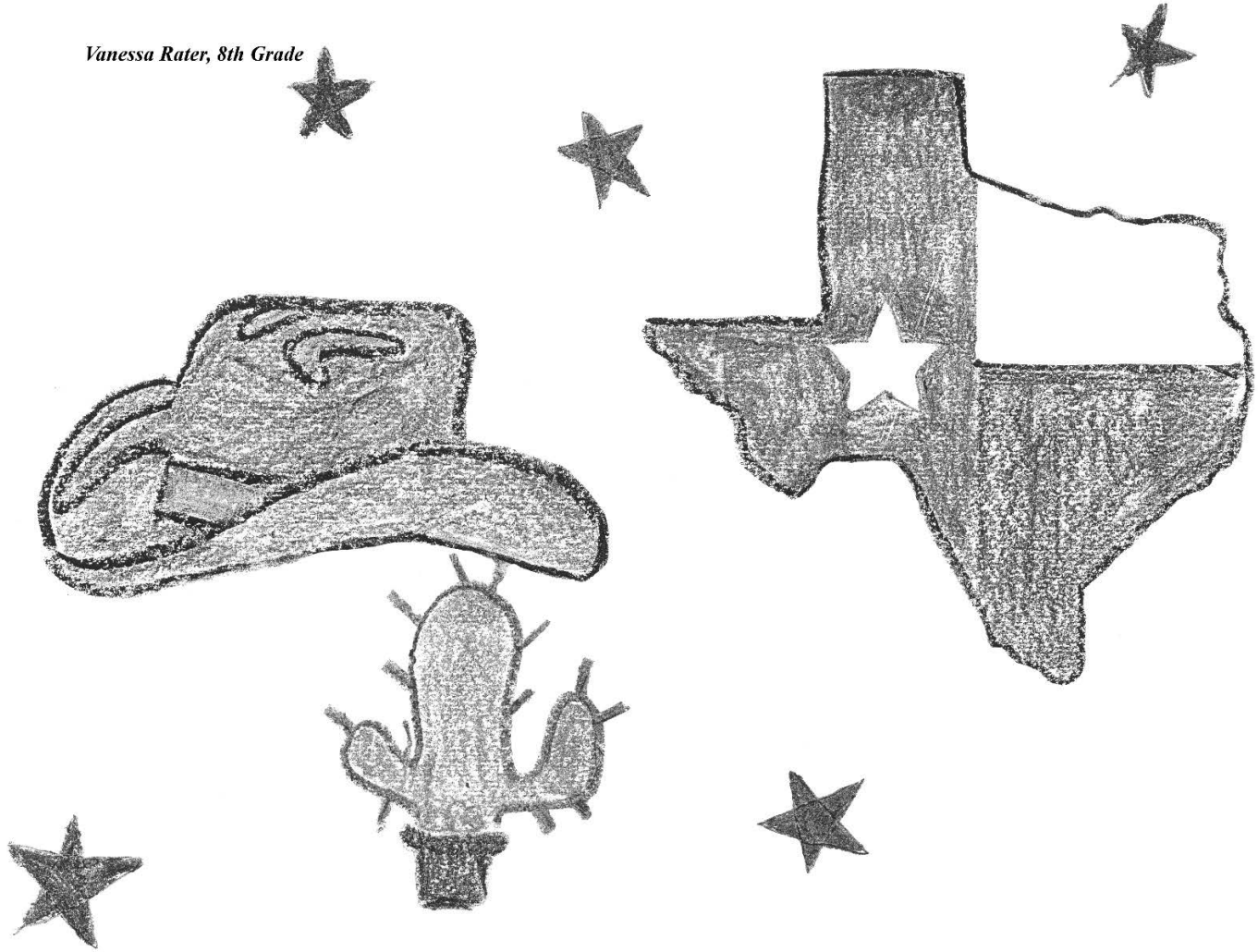
The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 16, 2018.

TRD-201801621
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: May 27, 2018
For further information, please call: (512) 424-5848

♦ ♦ ♦

Vanessa Rater, 8th Grade



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 12. SWORN COMPLAINTS

SUBCHAPTER A. GENERAL PROVISIONS AND PROCEDURES

1 TAC §12.37

Proposed new §12.37, published in the October 13, 2017, issue of the *Texas Register* (42 TexReg 5606), is automatically withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on April 16, 2018.

TRD-201801622

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 112. HEARING INSTRUMENT FITTERS AND DISPENSERS

SUBCHAPTER F. TEMPORARY TRAINING PERMIT

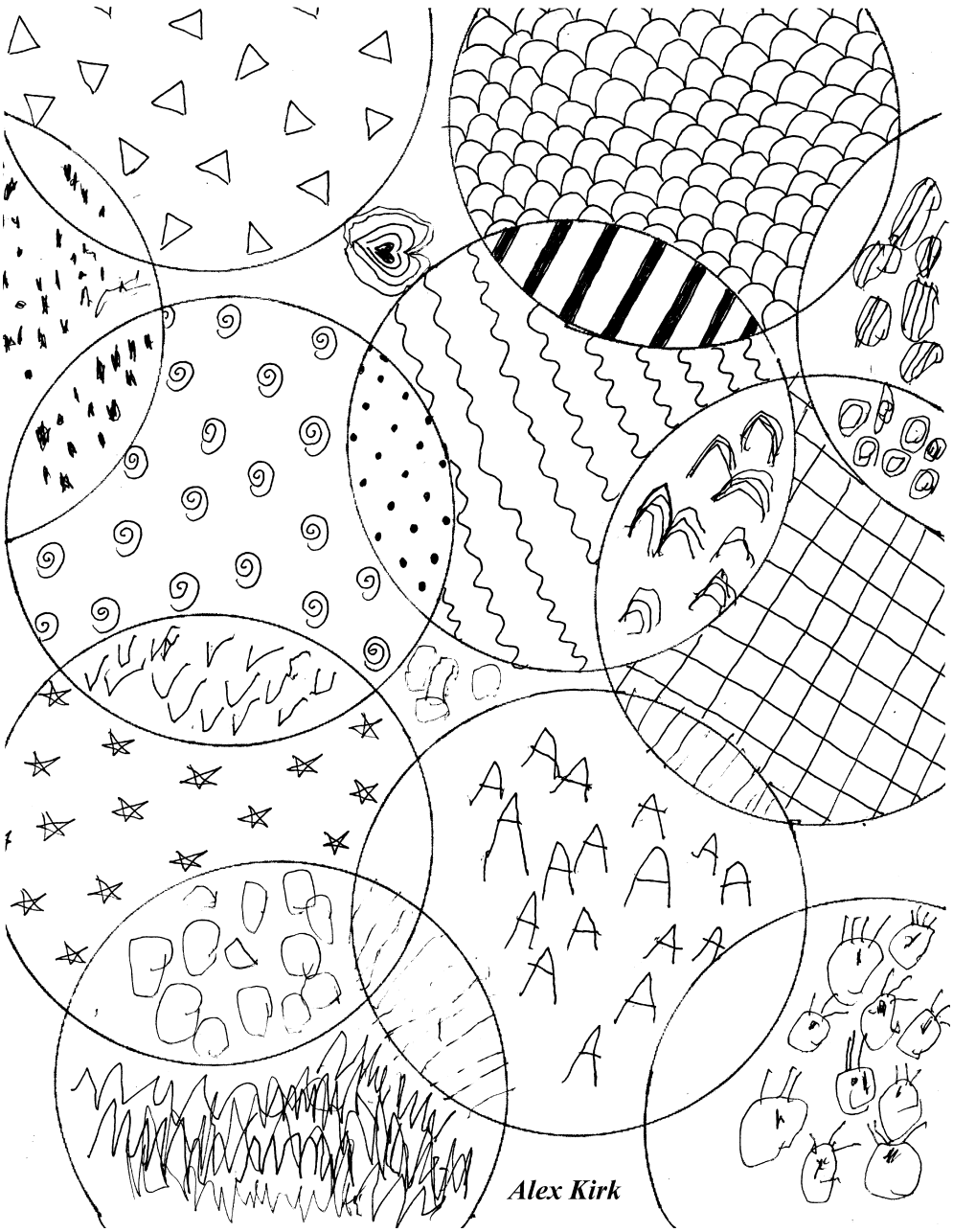
16 TAC §§112.50, 112.52, 112.53

The Texas Department of Licensing and Regulation withdraws the proposed amended §§112.50, 112.52, 112.53, which appeared in the February 9, 2018, issue of the *Texas Register* (42 TexReg 701).

Filed with the Office of the Secretary of State on April 11, 2018.

TRD-201801551
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Effective date: April 11, 2018
For further information, please call: (512) 463-8179

♦ ♦ ♦



Alex Kirk

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

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PART 2. TEXAS ETHICS COMMISSION

CHAPTER 6. ORGANIZATION AND ADMINISTRATION
SUBCHAPTER A. GENERAL RULES

1 TAC §6.1

The Texas Ethics Commission (the Commission) adopts an amendment to Texas Ethics Commission Rules §6.1, regarding definitions of terms in Commission rules. The amendment is adopted without changes to the proposed text as published in the February 23, 2018, issue of the *Texas Register* (43 TexReg 975) and will not be republished.

The Judicial Campaign Fairness Act (JCFA) includes a set of campaign contribution, reimbursement, and expenditure limits applicable to candidates for and holders of judicial offices, which include all state district judges and higher courts and statutory county and probate court judges. Simultaneously with rule §6.1, the Commission is adopting rules §27.1 and §27.101 to clarify issues related to the JCFA. For purposes of those rules and any future rules concerning the JCFA, the terms "judicial office" and "non-judicial office" need to be defined to clarify how those rules will apply. The offices covered by the JCFA are listed in §253.151 of the Election Code, which is copied by the rule's definition of "judicial office" and excluded by the definition of "non-judicial office."

No public comments were received on this amended rule.

The amended rule §6.1 is adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

The amended rule §6.1 specifically affects Subchapter F of Chapter 253 of the Election Code and generally affects Chapters 251 to 255 of the Election Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 13, 2018.

TRD-201801610
Seana Willing
Executive Director
Texas Ethics Commission
Effective date: May 3, 2018
Proposal publication date: February 23, 2018
For further information, please call: (512) 463-5800

CHAPTER 12. SWORN COMPLAINTS
SUBCHAPTER A. GENERAL PROVISIONS AND PROCEDURES

1 TAC §12.36

The Texas Ethics Commission (the commission) adopts new Texas Ethics Commission Rules §12.36, clarifying the facts that the Commission will consider when assessing a civil penalty in the sworn complaint (enforcement) process. The new rule is adopted without changes to the proposed text as published in the February 23, 2018, issue of the *Texas Register* (43 TexReg 977) and will not be republished.

Section 571.173 of the Government Code authorizes the Commission to impose a civil penalty of not more than $5,000 or triple the amount at issue under a law administered and enforced by the Commission, whichever amount is more, for a delay in complying with a Commission order or for a violation of a law administered and enforced by the Commission. Section 571.177 of the Government Code lists the factors that the Commission shall consider when assessing a civil penalty, including the seriousness and circumstances of a violation, the history of previous violations, the violator's good faith, and "other matters that justice may require." The list of factors provides the Commission with significant discretion in imposing a civil penalty.

New rule §12.36 clarifies that the factors identified in §571.177, Government Code, include whether a respondent timely responds to written questions or subpoenas in the enforcement process. This serves to notify a respondent that responses to discovery requests and subpoenas can be weighed by the Commission when determining the amount of a civil penalty.

Additionally, current Commission Rule §18.27 states that the Commission may consider the fine amounts set out in Title 1, Chapter 18 when assessing a fine in the sworn complaint process. New rule §12.36 includes a slightly revised §18.27, which is being repealed concurrently with this new rule. Chapter 12 is a more appropriate location containing other rules related to sworn complaints. Subsection (b) of §18.27 states that the Commission is not required to waive a fine when a respondent corrects a report, but the Commission may consider it a mitigating factor. That subsection is amended slightly to state that filing a late report or making a corrective action could also be considered mitigating factors when assessing a fine.

No public comments were received on this new rule.

The new rule §12.36 is adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Chapter 571 of the Government Code.

The new rule §12.36 affects Subchapters E and F of Chapter 571 of the Government Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 13, 2018.

TRD-201801614
Seana Willing
Executive Director
Texas Ethics Commission
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Proposal publication date: February 23, 2018
For further information, please call: (512) 463-5800

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SUBCHAPTER D. PRELIMINARY REVIEW HEARING

1 TAC §12.87

The Texas Ethics Commission (the Commission) adopts an amendment to Texas Ethics Commission Rules §12.87, which sets procedures for preliminary review hearings. The amendment is adopted without changes to the proposed text as published in the February 23, 2018, issue of the *Texas Register* (43 TexReg 978) and will not be republished.

The rule is amended to require Commission staff to send a proposed resolution to a respondent within 14 days, instead of 10 days, after the conclusion of a preliminary review hearing in which the Commission finds credible evidence of a violation.

No public comments were received on this amended rule.

The amended rule §12.87 is adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Chapter 571 of the Government Code.

The new rule §12.87 affects Subchapter E of Chapter 571 of the Government Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 13, 2018.

TRD-201801615
Seana Willing
Executive Director
Texas Ethics Commission
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Proposal publication date: February 23, 2018
For further information, please call: (512) 463-5800

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CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §18.27

The Texas Ethics Commission (the commission) adopts the repeal of Texas Ethics Commission Rules §18.27, which is incorporated into a new rule clarifying the facts that the Commission will consider when assessing a civil penalty in the sworn complaint (enforcement) process. The repeal is adopted without changes to the proposed text as published in the February 23, 2018, issue of the *Texas Register* (43 TexReg 979) and will not be republished.

Section 571.177 of the Government Code lists the factors that the Commission shall consider when assessing a civil penalty in the sworn complaint process. Current Commission Rule §18.27 states that the Commission may consider the fine amounts set out in Title 1, Chapter 18 when assessing a fine in the sworn complaint process. The Commission concurrently adopted new rule §12.36, which includes a slightly revised §18.27. Chapter 12 is a more appropriate location containing other rules related to sworn complaints.

No public comments were received on the repeal of this rule.

The repeal of §18.27 is adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Chapter 571 of the Government Code.

The repeal of §18.27 affects Subchapters E and F of Chapter 571 of the Government Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 13, 2018.

TRD-201801616
Seana Willing
Executive Director
Texas Ethics Commission
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For further information, please call: (512) 463-5800

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CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER A. GENERAL RULES

1 TAC §20.5

The Texas Ethics Commission (the Commission) adopts an amendment to Texas Ethics Commission Rules §20.5, regarding a county elections administrator or tax assessor-collector acting as the filing authority for campaign finance reports. The amendment is adopted without changes to the proposed text as published in the February 23, 2018, issue of the *Texas Register* (43 TexReg 980) and will not be republished.

By statute, the county clerk is the default filing authority for campaign finance reports filed by candidates for elective county offices and specific-purpose committees supporting or opposing them. Section 31.031 of the Election Code authorizes a commissioners court to create the position of county elections administrator. Section 31.043 of the Election Code states that the county elections administrator shall perform, in part, the duties and functions placed on the county clerk by the Election Code. Title 15 of the Election Code requires a county clerk to act as the filing authority for campaign treasurer appointments and campaign finance reports. Thus, when a county has an elections administrator, that person is the filing authority. However, a commissioners court may also transfer election-related duties and

functions of the county clerk to a county tax assessor-collector under section 31.071 of the Election Code.

The Election Code clearly provides that if the duties of an elections administrator are legally transferred to the tax assessor-collector, then the tax assessor-collector is the filing authority. The amendment to the rule makes it clear that the filing authority is either the elections administrator or tax assessor-collector, depending on who is legally required by the Election Code to perform the functions of the county clerk.

The amendment also deletes §20.5(b), which states that single-county judicial candidates and officeholders must file a campaign treasurer appointment with the Commission and campaign finance reports with both the county and the Commission. That rule has been made obsolete by statutory changes. Under current law, all judicial district candidates and officeholders are required to file with the Commission only.

No public comments were received on this amended rule.

The amended rule §20.5 is adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

The amended rule §20.5 affects Title 15 of the Election Code and, more specifically, §§252.005, 252.006, and 252.007 and §§254.066, 254.097, 254.130, and 254.202.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 13, 2018.

TRD-201801617
Seana Willing
Executive Director
Texas Ethics Commission
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Proposal publication date: February 23, 2018
For further information, please call: (512) 463-5800

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1 TAC §20.33

The Texas Ethics Commission (the Commission) adopts an amendment to Texas Ethics Commission Rules §20.33, regarding the authority of the Commission to terminate an inactive filer's campaign treasurer appointment. The amendment is adopted without changes to the proposed text as published in the February 23, 2018, issue of the *Texas Register* (43 TexReg 981) and will not be republished.

Section 252.0131 of the Election Code authorizes the Commission and local filing authorities to terminate the campaign treasurer appointment of an inactive candidate or political committee in an open meeting. Under previous Commission rules §20.33, a Commission filer is "inactive" if the filer has not filed a report for more than a year.

Section 252.0131(a)(2), Election Code, states that a candidate is inactive if the candidate has not been elected to an office for which a campaign is required to file a campaign treasurer appointment with the authority who is seeking to terminate the appointment. The current rule is based on the interpretation that §252.0131(a)(2) permits the termination of a campaign treasurer appointment for a candidate unless that candidate has ever been elected to one or more certain offices. The amendment is based on a reevaluation of that statute and permits the termination of a campaign treasurer appointment of a former officeholder but not a current officeholder. Such a reading will help eliminate filing obligations for inactive candidates and reduce the administrative burdens on the Commission.

No public comments were received on this amended rule.

The amended rule §20.33 is adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

The amended rule §20.33 affects section 252.0131 of the Election Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 13, 2018.

TRD-201801618
Seana Willing
Executive Director
Texas Ethics Commission
Effective date: May 3, 2018
Proposal publication date: February 23, 2018
For further information, please call: (512) 463-5800

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CHAPTER 27. JUDICIAL CAMPAIGN FAIRNESS ACT
SUBCHAPTER A. GENERAL RULES

1 TAC §27.1

The Texas Ethics Commission (the Commission) adopts new Texas Ethics Commission Rules §27.1, regarding the scope of Chapter 27 of the Commission's rules. The new rule is adopted without changes to the proposed text as published in the February 23, 2018, issue of the *Texas Register* (43 TexReg 982) and will not be republished.

The Judicial Campaign Fairness Act (JCFA) includes a set of campaign contribution, reimbursement, and expenditure limits applicable to candidates for and holders of judicial offices, which include all state district judges and higher courts and statutory county and probate court judges. The Commission creates Chapter 27 to further administer the JCFA. The new rule §27.1 clarifies that Chapter 27 applies only to the same judicial offices already covered by the JCFA according to §253.151, Election Code.

No public comments were received on this new rule.

The new rule §27.1 is adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

The new rule §27.1 affects Subchapter F of Chapter 253 of the Election Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 13, 2018.

TRD-201801612
Seana Willing
Executive Director
Texas Ethics Commission
Effective date: May 3, 2018
Proposal publication date: February 23, 2018
For further information, please call: (512) 463-5800

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SUBCHAPTER C. GENERAL REPORTING RULES

1 TAC §27.101

The Texas Ethics Commission (the Commission) adopts new Texas Ethics Commission Rules §27.101, regarding when a declaration of intent (JDI) is required for judicial candidates. The new rule is adopted without changes to the proposed text as published in the February 23, 2018, issue of the *Texas Register* (43 TexReg 982) and will not be republished.

The Judicial Campaign Fairness Act (JCFA) includes a set of campaign contribution, reimbursement, and expenditure limits applicable to candidates for and holders of judicial offices, which include all state district judges and higher courts and statutory county and probate court judges. Under the JCFA, a candidate for judicial office is required to file a JDI, a declaration stating whether the candidate will or will not comply with the voluntary expenditure limits. The declaration is made using the Commission's campaign treasurer appointment form (JCTA). If a candidate declares that he or she intends to comply with the limits, then the candidate is a "complying candidate" under the law. If the candidate chooses not to comply, or fails to file a JDI when becoming a judicial candidate, or exceeds the limit, then the candidate is a "noncomplying candidate." A candidate cannot accept a campaign contribution or make a campaign expenditure before filing the JDI.

New rule §27.101 clarifies the statutory language in §253.164, Election Code, which states that a person must file a JDI "[w]hen a person becomes a candidate for a judicial office." The rule requires a JDI only if a person becomes a candidate for a judicial office at a time when the person is not already a candidate for a judicial office, or when a judicial candidate decides to change their decision to comply or not comply with the expenditure limits. Additionally, if a judicial candidate decides to seek a judicial office that would require campaign finance reports to be filed with a new filing authority (e.g., a county court-at-law judge deciding to run for district judge), the rule requires the candidate to file a certified copy of their JDI with the new filing authority along with their transferred campaign treasurer appointment.

No public comments were received on this new rule.

The new rule §27.101 is adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

The new rule §27.101 affects sections 252.010 and 253.164 of the Election Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 13, 2018.

TRD-201801613
Seana Willing
Executive Director
Texas Ethics Commission
Effective date: May 3, 2018
Proposal publication date: February 23, 2018
For further information, please call: (512) 463-5800

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

SUBCHAPTER H. WATER UTILITY SUBMETERING AND ALLOCATION

16 TAC §24.121, §24.126

The Public Utility Commission of Texas (commission) adopts an amendment to §24.121 relating to general rules and definitions with changes to the proposed text as published in the November 10, 2017, issue of the *Texas Register* (42 TexReg 6291) and new §24.126 relating to complaint jurisdiction without changes to the proposed text as published in the November 10, 2017, issue of the *Texas Register* (42 TexReg 6291).

The amendment and new rule regarding submetering and allocated water and sewer utility services as well as establishing a complaint process and restitution implement Senate Bill 873 (SB 873), 85th Texas Legislature, Regular Session. The amendments and new section are adopted under Project 47302.

Section 24.121

The commission adopts non-substantive changes to correct the word "server" in §24.121(b) to "sewer" and to change the capitalization of the word "Condominium" in the definition portion of §24.121(c)(3) to a lower case "condominium".

SB 873 amended Texas Water Code §13.501 (TWC) to add new definitions for the terms "condominium manager" and "utility costs," and amended the existing definition of "owner." In addition, SB 873 added new TWC §13.505(a) to define the term "overcharge." The commission adds new §24.121(c)(3) to define the term "condominium manager" and renumbers the definitions thereafter for consistency purposes. The commission also adds new §24.121(c)(11) and (17) to define the terms "overcharge" and "utility costs," respectively. To add clarity to the rules, the commission adds new §24.121(c)(16) to define the term "undercharge." The commission reorders the definitions so that they are in alphabetical order.

SB 873 also amended TWC §13.503 to add new subsection (f), which specifies that the amendments do not limit the owner, operator or manager from billing or collecting for any amount unrelated to water or sewer submetering utility costs. Similarly, SB 873 amended TWC §13.5031 to add new subsection (b), which specifies that the amendments to TWC §13.5031 do not limit the owner, operator or manager from billing or collecting for any

amount unrelated to water or sewer nonsubmetering utility costs. The commission amends §24.121(b) to make this specification.

Section 24.126

SB 873 made changes to TWC §13.505(b) to specify that the commission has exclusive jurisdiction under TWC Chapter 13 regarding submetering and allocated utility service. The commission adds new §24.126(a) to make this specification.

In addition, SB 873 amended TWC §13.505(c) to establish a complaints and hearings process, whereby a complainant can appear remotely for a hearing, and specified that the commission shall require the owner or manager to repay the complaining tenant the amount overcharged if the amount is determined to be valid. The commission adds new §24.126(b) to implement this subsection.

Lastly, SB 873 amended TWC §13.505(d) to stipulate that any changes to TWC §13.505 do not limit or impair the commission's enforcement authority under TWC Subchapter K and specified that the commission may assess an administrative penalty for a violation under this chapter. The commission adds new §24.126(c) to implement this section.

A public hearing was not requested; therefore, no hearing was held on the proposed amendment or addition. No comments were filed regarding the proposed amendment or addition after the Open Meeting held on October 26, 2017.

The amendment and new section are adopted under TWC §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: TWC §13.041(b).

§24.121. General Rules and Definitions.

(a) Purpose and scope. The provisions of this subchapter are intended to establish a comprehensive regulatory system to assure that the practices involving submetered and allocated billing of dwelling units and multiple use facilities for water and sewer utility service are just and reasonable and include appropriate safeguards for tenants.

(b) Application. The provisions of this subchapter apply to apartment houses, condominiums, multiple use facilities, and manufactured home rental communities billing for water and wastewater utility service on a submetered or allocated basis. The provisions of this subchapter do not limit the authority of an owner, operator, or manager of an apartment house, manufactured home rental community, or multiple use facility to charge, bill for, or collect rent, an assessment, an administrative fee, a fee relating to upkeep or management of chilled water, boiler, heating, ventilation, air conditioning, or other building system, or any other amount that is unrelated to water and sewer utility service costs.

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

(1) Allocated utility service--Water or wastewater utility service that is master metered to an owner by a retail public utility and allocated to tenants by the owner.

(2) Apartment house--A building or buildings containing five or more dwelling units that are occupied primarily for nontransient use, including a residential condominium whether rented or owner occupied, and if a dwelling unit is rented, having rent paid at intervals of one month or more.

(3) Condominium manager--A condominium unit owners' association organized under Texas Property Code §82.101, or an incorporated or unincorporated entity comprising the council of owners under Chapter 81, Property Code. Condominium Manager and Manager of a Condominium have the same meaning.

(4) Customer service charge--A customer service charge is a rate that is not dependent on the amount of water used through the master meter.

(5) Dwelling unit--One or more rooms in an apartment house or condominium, suitable for occupancy as a residence, and containing kitchen and bathroom facilities; a unit in a multiple use facility; or a manufactured home in a manufactured home rental community.

(6) Dwelling unit base charge--A flat rate or fee charged by a retail public utility for each dwelling unit recorded by the retail public utility.

(7) Manufactured home rental community--A property on which spaces are rented for the occupancy of manufactured homes for nontransient residential use and for which rental is paid at intervals of one month or longer.

(8) Master meter--A meter used to measure, for billing purposes, all water usage of an apartment house, condominium, multiple use facility, or manufactured home rental community, including common areas, common facilities, and dwelling units.

(9) Multiple use facility--A commercial or industrial park, office complex, or marina with five or more units that are occupied primarily for nontransient use and are rented at intervals of one month or longer.

(10) Occupant--A tenant or other person authorized under a written agreement to occupy a dwelling.

(11) Overcharge--The amount, if any, a tenant is charged for submetered or nonsubmetered master metered utility service to the tenant's dwelling unit after a violation occurred relating to the assessment of a portion of utility costs in excess of the amount the tenant would have been charged under this subchapter. Overcharge and Overbilling have the same meaning.

(12) Owner--The legal titleholder of an apartment house, a manufactured home rental community, or a multiple use facility; and any individual, firm, or corporation expressly identified in the lease agreement as the landlord of tenants in the apartment house, manufactured home rental community, or multiple use facility. The term does not include the manager of an apartment home unless the manager is expressly identified as the landlord in the lease agreement.

(13) Point-of-use submeter--A device located in a plumbing system to measure the amount of water used at a specific point of use, fixture, or appliance, including a sink, toilet, bathtub, or clothes washer.

(14) Submetered utility service--Water utility service that is master metered for the owner by the retail public utility and individually metered by the owner at each dwelling unit; wastewater utility service based on submetered water utility service; water utility service measured by point-of-use submeters when all of the water used in a dwelling unit is measured and totaled; or wastewater utility service based on total water use as measured by point-of-use submeters.

(15) Tenant--A person who owns or is entitled to occupy a dwelling unit or multiple use facility unit to the exclusion of others and, if rent is paid, who is obligated to pay for the occupancy under a written or oral rental agreement.

(16) Undercharge--The amount, if any, a tenant is charged for submetered or nonsubmetered master metered utility service to the tenant's dwelling unit less than the amount the tenant would have been charged under this subchapter. Undercharge and Underbilling have the same meaning.

(17) Utility costs--Any amount charged to the owner by a retail public utility for water or wastewater service. Utility Costs and Utility Service Costs have the same meaning.

(18) Utility service--For purposes of this subchapter, utility service includes only drinking water and wastewater.

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 April 13, 2018.

TRD-201801606
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: May 3, 2018
Proposal publication date: November 10, 2017
For further information, please call: (512) 936-7223

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 111. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 111, Subchapter A, §111.2; Subchapter B, §111.10; Subchapter C, §§111.21 - 111.23; Subchapter D, §111.37; Subchapter E, §111.47; Subchapter F, §111.55 and §111.57; Subchapter H, §§111.70, 111.75, and 111.77; Subchapter I, §§111.80, 111.85, and 111.87; Subchapter J, §§111.90, 111.95, and 111.97; Subchapter L, §111.115 and §111.117, Subchapter O, §111.140; Subchapter P, §111.151; Subchapter Q, §111.160; Subchapter R, §111.171; Subchapter S, §111.180, Subchapter U, §111.200; and Subchapter V, §111.213; adopts new rules at Subchapter E, §111.41 and §111.42; Subchapter F, §111.52; Subchapter I, §111.81 and §111.82; Subchapter J, §111.92, and Subchapter V, §111.216; and adopts the repeal of existing rules at Subchapter G, §§111.60, 111.65, and 111.66; and Subchapter K, §§111.100, 111.105, and 111.106, regarding the Speech-Language Pathologists and Audiologists program, without changes to the proposed text as published in the January 26, 2018, issue of the *Texas Register* (43 TexReg 400). The rules will not be republished.

The Commission also adopts amendments to existing rules at 16 TAC, Chapter 111, Subchapter D, §111.30 and §111.35; Subchapter E, §111.40 and §111.45; Subchapter F, §111.50; and Subchapter P, §111.154; and new rules at Subchapter F, §111.51; and Subchapter J, §111.91, regarding the Speech-Language Pathologists and Audiologists program, with changes to the proposed text as published in the January 26, 2018, issue of the *Texas Register* (43 TexReg 400). The rules will be republished.

JUSTIFICATION AND EXPLANATION OF THE RULES

The adopted rules are necessary to implement House Bill 4007 (H.B. 4007), 85th Legislature, Regular Session (2017); make licensing and other clean-up changes; and update the supervision provisions throughout the chapter. These three categories of rule changes have been combined into one adoption, since there is overlap in some of the affected rule sections and this combined adoption eliminates the need for separate, consecutive rulemakings.

H.B. 4007 Changes

The adopted rules implement H.B. 4007, 85th Legislature, Regular Session (2017). H.B. 4007, in part, repealed the temporary certificate of registration in speech-language pathology and audiology, eliminated residency requirements for advisory board membership, and eliminated provisions regarding failing the written examination. It also repealed redundancies in regard to the licensing and regulation of the Speech-Language Pathologists and Audiologists program.

Licensing and Other Clean-up Changes

The adopted rules also make licensing and other clean-up changes identified by The Texas Department of Licensing and Regulation (Department) staff since the Speech-Language Pathologists and Audiologists program was transferred from the Department of State Health Services (DSHS) to the Department effective October 3, 2016, pursuant to S.B. 202, 84th Legislature, Regular Session (2015).

Supervision Changes

In addition, the adopted rules implement changes developed by the Speech-Language Pathologists and Audiologists Advisory Board Standard of Care Workgroup and Department staff related to the supervision provisions throughout the chapter. The supervision changes include reorganizing existing rules and moving the internship, supervision, and practice and duties requirements into separate distinct rule sections. These changes will make it easier to find specific provisions, including supervision requirements.

The supervision rules, which are included in the combined rule adoption, were previously contained in a separate draft proposal that was the work product of the workgroup and Department staff. The separate supervision draft proposed rules were presented to and discussed by the Speech-Language Pathologists and Audiologists Advisory Board (Advisory Board) at its meeting on November 15, 2017. The advisory board members offered comments and suggested changes to several sections. The separate supervision draft proposed rules and the Advisory Board's suggested changes were incorporated into the combined rule package.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §111.2, Definitions. The adopted rules add new definitions for the following terms: Direct supervision related to Assistants (Speech-Language Pathology and Audiology); Direct supervision related to Interns (Speech-Language Pathology); In-person; Indirect supervision related to Assistants (Speech-Language Pathology and Audiology); Indirect supervision related to Interns (Speech-Language Pathology); Intern Plan and Agreement of Supervision Form (for Interns in Speech-Language Pathology and Audiology); and Supervisory Responsibility Statement (SRS) Form (for Assistants in Audiology or Speech-Language Pathology). The adopted rules amend the following definitions: Assistant in audiology; Assistant in speech-language pathology; Intern in audiology; Intern in speech-lan-

guage pathology; and Supervisor. The adopted rules repeal the following definition: Under the direction of. These changes are part of the supervision changes.

The adopted rules amend §111.10. Membership. The adopted rules removed former subsection (b)(1), which required an advisory board member to have been a resident of Texas for the two years preceding the date of appointment. This change is a result of H.B. 4007.

The adopted rules amend §111.21, License Examination--Written Examination. The adopted rules repealed subsections (c) and (d), regarding reexamination. These subsections implemented Texas Occupations Code §401.307, which was repealed by H.B. 4007.

The adopted rules amend §111.22, Waiver of Written Examination Requirements. The adopted rules eliminated a sentence under subsection (a) that was unnecessary and that conflicted with §111.23 as amended. This change is part of the licensing and other clean-up change.

The adopted rules amend §111.23, License Examination--Jurisprudence Examination. The adopted change aligns the rules with the former DSHS practice that continued with the transfer of the program to the Department effective October 3, 2016. The adopted rules require an applicant to show proof of successful completion of the jurisprudence examination at the time of application, unless applying for an upgrade. The new upgrade provisions are added to §111.35 and §111.75. The adopted rules change the timeline for completion of the jurisprudence examination from no more than 6 months to no more than 12 months prior to the date of licensure application. These changes are part of the licensing and other clean-up changes.

The adopted rules amend §111.30, Speech-Language Pathology License--Licensing Requirements. The adopted rules amend subsection (b) by eliminating outdated provisions and by adding and expanding an existing provision found under §111.35(d)(2) regarding applicants who have transcripts in a language other than English or earned degrees at a foreign university. The adopted rules update the terminology under subsection (d) by replacing references to "supervised professional experience" with "internship" for consistency in terminology across rule sections. The adopted rules eliminate the 10-year requirement for exams under subsections (e) and (f). These changes are part of the licensing and other clean-up changes.

The adopted rules amend §111.35, Speech-Language Pathology License--Application and Eligibility Requirements. The adopted rules amend subsection (b) by adding clarifying language regarding submitting transcripts and by relocating and expanding an existing provision found under subsection (d)(2) regarding applicants who have transcripts in a language other than English or earned degrees at a foreign university. The adopted rules also eliminate unnecessary provisions from subsection (b) by removing the submission of the Course Work and Clinical Experience Form and removing the submission of the supervisor's diploma or transcript if the internship was completed out-of-state. The adopted rules add clarifying language under subsection (c) regarding the submission of fingerprints. The adopted rules update and clarify the provisions under subsection (d) regarding the waiver of clinical experience and examination requirements. The adopted rules add a new subsection (e) regarding the upgrade from a Texas intern license to a full license, which aligns the rules with the former DSHS practice that continued with the transfer of the program to the Department effective October 3, 2016. These changes are part of the licensing and other clean-up changes.

The adopted rules amend §111.37, Speech-Language Pathology License--License Terms; Renewals. The adopted rules remove former subsection (c)(2) and add subsection (d) to clarify that a licensee must successfully pass a criminal history background check in order to renew the license; however, the licensee does not need to submit new fingerprints. This change is part of the licensing and other clean-up changes.

The adopted rules amend §111.40, Intern in Speech-Language Pathology License--Licensing Requirements--Education and Clinical Work. The adopted rules amend subsection (b) by eliminating outdated provisions and by adding a provision regarding applicants who have transcripts in a language other than English or earned degrees at a foreign university. The adopted rules amend subsection (d) by providing examples of ways an applicant may show "proof of current knowledge" if the course work and clinical experience was earned more than 10 years before the date of application. The adopted rules update terminology under subsection (e). The adopted rules relocate the requirements regarding internships, supervision, and practice and duties found in §111.40 to new rule sections. The adopted rules repeal former subsections (g) through (q) and relocate most of those provisions to new §111.41 and §111.42. The purpose is to make the rules more user-friendly by reorganizing the rules into smaller, more distinct rule sections. The changes to subsections (b), (d), and (e) are part of the licensing and other clean-up changes. The repeal and relocation of the provisions under former subsections (g) through (q) are part of the supervision changes.

The adopted rules add new §111.41, Intern in Speech-Language Pathology License--Internship and Supervision Requirements. The adopted rules relocate provisions found in former rules §111.40(g), (h), (i), (k), (l), and (q) to new §111.41. This new rule section sets out the internship and supervision requirements for interns in speech-language pathology. New §111.41(a) clearly restates the supervision requirement and helps streamline and improve the readability of the section by specifying the use of the words intern and supervisor. The provisions under new §111.41(d) and (g)(4) include licensing and other clean-up changes. The entire section includes supervision changes.

The adopted rules add new §111.42, Intern in Speech-Language Pathology License--Practice and Duties of Interns. The adopted rules relocate provisions found in former rules §111.40(m), (n), (o), and (p) to new §111.42. This new rule section sets out the practice and duties requirements for interns in speech-language pathology. New §111.42(a) clearly restates the supervision requirement and helps streamline and improve the readability of the section by specifying the use of the words intern and supervisor. The provisions under new §111.42(e) include licensing and other clean-up changes. The entire section includes supervision changes.

The adopted rules amend §111.45, Intern in Speech-Language Pathology License--Application and Eligibility Requirements. The adopted rules amend subsection (b) by clarifying the documents to be submitted if the degree has been conferred or has not been conferred; adding a provision regarding applicants who have transcripts in a language other than English or earned degrees at a foreign university; and making technical clean-up changes. The adopted rules also eliminate the requirement under subsection (b) that all applicants must submit the Clinical Work and Clinical Experience Form, and clarify that this form is

only submitted if the degree has not been conferred yet. The adopted rules add clarifying language under subsection (c) regarding the submission of fingerprints. These changes are part of the licensing and other clean-up changes.

The adopted rules amend §111.47, Intern in Speech-Language Pathology License--License Terms; Renewals. The adopted rules remove former subsection (c)(2) and add subsection (d) to clarify that a licensee must successfully pass a criminal history background check in order to renew the license; however, the licensee does not need to submit new fingerprints. The adopted rules also remove former subsection (c)(5) that required a licensed intern in speech-language pathology to submit an evaluation of the intern's progress or performance and any intern plans and supervisory evaluations to the Department as part of the license renewal process. These changes are part of the licensing and other clean-up changes.

The adopted rules amend §111.50, Assistant in Speech-Language Pathology License--Licensing Requirements--Education and Clinical Observation and Experience. The adopted rules add clarifying language under subsection (a). The adopted rules amend subsection (b) by providing examples of ways an applicant may show "proof of current knowledge" if the course work and clinical experience was earned more than 10 years before the date of application. The adopted rules add a proof of current knowledge requirement to subsection (c). The adopted rules amend subsection (e) by adding clarifying language that all hours worked by the licensed assistant must be completed under in-person, direct supervision of the licensed speech-language pathologist, and by eliminating the requirement that certain documents under subsection (e)(4) be submitted to the Department.

The adopted rules relocate the requirements regarding supervision and practice and duties found in §111.50 to new rule sections. The adopted rules repeal former subsections (f) through (n) and relocate most of those provisions to new §111.51 and new §111.52. The purpose is to make the rules more user-friendly by reorganizing the rules into smaller, more distinct rule sections. The changes to subsections (a), (b), (c), and (e) are part of the licensing and other clean-up changes. The repeal and relocation of the provisions under former subsections (f) through (n) are part of the supervision changes.

The adopted rules add new §111.51, Assistant in Speech-Language Pathology License--Supervision Requirements. The adopted rules relocate provisions found in former rules §111.50(f), (g), (h)(1) - (3), (j), (m), and (n) to new §111.51. This new rule section sets out the supervision requirements for assistants in speech-language pathology. New §111.51(a) clearly restates the supervision requirement and helps streamline and improve the readability of the section by specifying the use of the words assistant and supervisor. The adopted rules add new §111.51(e) regarding the supervisor only providing direct supervision at the worksite in which the assistant provides services to existing clients or while the assistant provides services to cases previously delegated to the assistant. The adopted rules update the requirements under §111.51(g) by restructuring the subsection, adding clarifying language, and addressing situations in which fewer than four weeks are worked in a calendar month. The entire section includes supervision changes.

The adopted rules add new §111.52, Assistant in Speech-Language Pathology License--Practice and Duties of Assistants. The adopted rules relocate provisions found in former rules §111.50(h)(4) - (5), (i), (k), and (l) to new §111.52. This new rule section sets out the practice and duties requirements for assistants in speech-language pathology. New §111.52(a) clearly restates the supervision requirement and helps streamline and improve the readability of the section by specifying the use of the words assistant and supervisor. The provisions under new §111.52 include licensing and other clean-up changes by changing references from "Individual Education Plan" to "Individual Education Program." The entire section includes supervision changes.

The adopted rules amend §111.55, Assistant in Speech-Language Pathology License--Application and Eligibility Requirements. The adopted rules eliminated language in subsection (b)(2) that is now part of the definition of Supervisory Responsibility Statement Form and the requirements under §111.51. The adopted rules clarify and correct the language under subsection (b)(3). These changes are part of the licensing and other clean-up changes.

The adopted rules amend §111.57, Assistant in Speech-Language Pathology License--License Terms; Renewals. The adopted rules remove former subsection (c)(2) and add subsection (d) to clarify that a licensee must successfully pass a criminal history background check in order to renew the license; however, the licensee does not need to submit new fingerprints. The adopted rules also make clean-up changes to renumbered subsection (c)(4). These changes are part of the licensing and other clean-up changes.

The adopted rules repeal Subchapter G, Requirements for Temporary Certificate of Registration in Speech-Language Pathology. The adopted repeal is due to H.B. 4007, which repealed the temporary certificate of registration in speech-language pathology.

The adopted rules repeal §111.60, Temporary Certificate of Registration in Speech-Language Pathology--Registration Requirements. The adopted repeal is due to H.B. 4007, which repealed the temporary certificate of registration in speech-language pathology.

The adopted rules repeal §111.65, Temporary Certificate of Registration in Speech-Language Pathology--Application and Eligibility Requirements. The adopted repeal is due to H.B. 4007, which repealed the temporary certificate of registration in speech-language pathology.

The adopted rules repeal §111.66, Temporary Certificate of Registration in Speech-Language Pathology--Issuing Registration. The adopted repeal is due to H.B. 4007, which repealed the temporary certificate of registration in speech-language pathology.

The adopted rules amend §111.70, Audiology License--License Requirements. The adopted rules add a new subsection (c) regarding applicants who have transcripts in a language other than English or earned degrees at a foreign university. The adopted rules also eliminated the 10-year requirement for exams under re-lettered subsection (e). The adopted rules make a technical clean-up change under re-lettered subsection (f). These changes are part of the licensing and other clean-up changes.

The adopted rules amend §111.75, Audiology License--Application and Eligibility Requirements. The adopted rules amend subsection (b) by adding clarifying language regarding submitting transcripts; updating a reference to the ASHA Council for Clinical Certification; and relocating and expanding an existing provision under subsection (d)(2) regarding applicants who have transcripts in a language other than English or earned degrees at

a foreign university. The adopted rules also eliminate unnecessary provisions from subsection (b) by removing the submission of the Course Work and Clinical Experience Form and removing the submission of the supervisor's diploma or transcript if the internship was completed out-of-state. The adopted rules add clarifying language under subsection (c) regarding the submission of fingerprints. The adopted rules update and clarify the provisions under subsection (d) regarding the waiver of clinical experience and examination requirements. The adopted rules add a new subsection (e) regarding the upgrade from a Texas intern license to a full license, which aligns the rules with the former DSHS practice that continued with the transfer of the program to the Department effective October 3, 2016. These changes are part of the licensing and other clean-up changes.

The adopted rules amend §111.77, Audiology License--License Terms; Renewals. The adopted rules remove former subsection (c)(2) and add subsection (d) to clarify that a licensee must successfully pass a criminal history background check in order to renew the license; however, the licensee does not need to submit new fingerprints. This change is part of the licensing and other clean-up changes.

The adopted rules amend §111.80, Intern in Audiology License--Licensing Requirements--Education. The adopted rules make a technical clean-up change to subsection (b). The adopted rules relocate the requirements regarding internships, supervision, and practice and duties formerly found in §111.80 to new rule sections. The adopted rules repeal former subsections (e) through (i) and relocate most of those provisions to new §111.81 and new §111.82. The purpose is to make the rules more user-friendly by reorganizing the rules into smaller, more distinct rule sections. The change to subsection (b) is part of the licensing and other clean-up changes. The repeal and relocation of the provisions under former subsections (e) through (i) are part of the supervision changes.

The adopted rules add new §111.81, Intern in Audiology License--Internship and Supervision Requirements. The adopted rules relocate provisions found in former rules §111.80(e), (f), (g)(1) - (3), and (i) to new §111.81. This new rule section sets out the internship and supervision requirements for interns in audiology. New §111.81(a) clearly restates the supervision requirement and helps streamline and improve the readability of the section by specifying the use of the words intern and supervisor. The provisions under new §111.81(e) include licensing and other clean-up changes. The entire section includes supervision changes.

The adopted rules add new §111.82, Intern in Audiology License--Practice and Duties of Interns. The adopted rules relocate provisions found in former rules §111.80(g)(4) and (h) to new §111.82. This new rule section sets out the practice and duties requirements for interns in audiology. New §111.82(a) clearly restates the supervision requirement and helps streamline and improve the readability of the section by specifying the use of the words intern and supervisor. The entire section includes supervision changes.

The adopted rules amend §111.85, Intern in Audiology License--Application and Eligibility Requirements. The adopted rules amend subsection (b) by removing the requirement to submit transcripts and by making technical changes. The adopted rules add clarifying language under subsection (c) regarding the submission of fingerprints. These changes are part of the licensing and other clean-up changes.

The adopted rules amend §111.87, Intern in Audiology License--License Terms; Renewals. The adopted rules remove former subsection (c)(2) and add subsection (d) to clarify that a licensee must successfully pass a criminal history background check in order to renew the license; however, the licensee does not need to submit new fingerprints. The adopted rules also remove former subsection (c)(3) that requires a licensed intern in audiology to submit an evaluation of the intern's progress or performance and any intern plans and supervisory evaluations to the Department as part of the license renewal process. These changes are part of the licensing and other clean-up changes.

The adopted rules amend §111.90, Assistant in Audiology License--Licensing Requirements--Education and Training. The adopted rules amend subsection (b) by adding a new subsection (b)(3) to provide that if the applicant holds a bachelor's degree or higher in communicative sciences or disorders, the applicant does not need to complete the Council of Accreditation of Occupational Hearing Conservation (CAOHC) certification course and examination. The adopted rules eliminate language in former subsection (b)(4)(A) that is now part of the definition of Supervisory Responsibility Statement Form and the requirements under §111.91. The adopted rules relocate the provisions from former subsection (b)(4)(B) to new subsection (b)(5) and add "in-person" direct supervision by the supervisor. The adopted rules amend subsection (c) by adding a cross-reference to the job-specific competency-based training under subsection (b)(5).

The adopted rules relocate the requirements regarding supervision and practice and duties formerly found in §111.90 to new rule sections. The adopted rules repeal former subsections (d) through (j) and relocate most of those provisions to new §111.91 and new §111.92. The purpose is to make the rules more user-friendly by reorganizing the rules into smaller, more distinct rule sections. The changes to subsections (b) and (c) are part of the supervision changes and the licensing and other clean-up changes. The repeal and relocation of the provisions under former subsections (d) through (j) are part of the supervision changes.

The adopted rules add new §111.91, Assistant in Audiology License--Supervision Requirements. The adopted rules relocate provisions found in former rules §111.90(d), (e), (f)(1) - (2), (i), and (j) to new §111.91. This new rule section sets out the supervision requirements for assistants in audiology. New §111.91(a) clearly restates the supervision requirement and helps streamline and improve the readability of the section by specifying the use of the words assistant and supervisor. The adopted rules update the requirements under §111.91(f) by restructuring the subsection, adding clarifying language, and addressing situations in which fewer than four weeks are worked in a calendar month. The entire section includes supervision changes.

The adopted rules add new §111.92, Assistant in Audiology License--Practice and Duties of Assistants. The adopted rules relocate provisions found in former rules §111.90(f)(3) - (5), (g), and (h) to new §111.92. This new rule section sets out the practice and duties requirements for assistants in audiology. New §111.92(a) clearly restates the supervision requirement and helps streamline and improve the readability of the section by specifying the use of the words assistant and supervisor. The entire section includes supervision changes.

The adopted rules amend §111.95, Assistant in Audiology License--Application and Eligibility Requirements. The adopted rules eliminated language in subsection (b)(2) that is now part of the definition of Supervisory Responsibility Statement Form

and the requirements under §111.91. The adopted rules add a new subsection (b)(6) to provide that if the applicant holds a bachelor's degree or higher in communicative sciences or disorders, the applicant shall submit proof of the degree instead of the Council of Accreditation of Occupational Hearing Conservation (CAOHC) certificate. These changes are part of the licensing and other clean-up changes.

The adopted rules amend §111.97, Audiology Assistant License--License Terms; Renewals. The adopted rules remove former subsection (c)(2) and add subsection (d) to clarify that a licensee must successfully pass a criminal history background check in order to renew the license; however, the licensee does not need to submit new fingerprints. The adopted rules also make clean-up changes to renumbered subsection (c)(4). These changes are part of the licensing and other clean-up changes.

The adopted rules repeal Subchapter K, Requirements for Audiology Temporary Certificate of Registration. The adopted repeal is due to H.B. 4007, which repealed the temporary certificate of registration in audiology.

The adopted rules repeal §111.100, Temporary Certificate of Registration in Audiology--Registration Requirements. The adopted repeal is due to H.B. 4007, which repealed the temporary certificate of registration in audiology.

The adopted rules repeal §111.105, Audiology Temporary Certificate of Registration--Application and Eligibility Requirements. The adopted repeal is due to H.B. 4007, which repealed the temporary certificate of registration in audiology.

The adopted rules repeal §111.106, Temporary Certificate of Registration in Audiology--Issuing Registration. The adopted repeal is due to H.B. 4007, which repealed the temporary certificate of registration in audiology.

The adopted rules amend §111.115, Dual License in Speech-Language Pathology and Audiology--Application and Eligibility Requirements. The adopted rules clarify that an applicant must submit fingerprints if not previously submitted when applying for a full license, assistant license, or intern license. This change is part of the licensing and other clean-up changes.

The adopted rules amend §111.117, Dual License in Speech-Language Pathology and Audiology--License Terms; Renewals. The adopted rules remove former subsection (c)(2) and add subsection (d) to clarify that a licensee must successfully pass a criminal history background check in order to renew the license; however, the licensee does not need to submit new fingerprints. This change is part of the licensing and other clean-up changes.

The adopted rules amend §111.140, Rules. The adopted rules remove placeholder language and insert a specific rule citation to 16 TAC Chapter 100, Health Related Program Administrative Rules. This change is part of the licensing and other clean-up changes.

The adopted rules amend §111.151, Consumer Information and Display of License. The adopted rules remove former subsection (c) regarding the display of a temporary certificate of registration. This change is due to H.B. 4007, which repealed the temporary certificate of registrations in speech-language pathology and audiology.

The adopted rules amend §111.154, Requirements, Duties, and Responsibilities of Supervisors and Persons Being Supervised. The adopted rules revise the supervision limits under re-lettered subsection (f)(4). The adopted rules return the supervision limits to the former limits when the program was regulated by DSHS. The adopted rules would allow a supervisor to supervise no more than a total of four (4) audiology interns and/or assistants, regardless of the type of degree held by an assistant. In addition, the proposed rules: (1) add clarifying language to subsections (b) and (c); (2) add a new subsection (d) regarding the supervision of speech-language pathology assistants; (3) add language regarding the supervision of audiology assistants, add clarifying language, and remove unnecessary language under re-lettered subsection (e); and (4) make technical changes in re-lettered subsections (f), (g), and (h). These changes are part of the supervision changes.

The adopted rules amend §111.160, Fees. The adopted rules amend subsection (b) and re-lettered subsection (e) to include upgrades from an intern license to a full license. This change is part of the licensing and other clean-up changes. In addition, the adopted rules repeal former subsections (e) and (i), regarding fees for temporary certificates of registration. This change is due to H.B. 4007, which repealed temporary certificates of registration.

The adopted rules amend §111.171, Complaints Regarding Standard of Care. The adopted rules removed placeholder language and insert a specific rule citation to 16 TAC Chapter 100, Health Related Program Administrative Rules. This change is part of the licensing and other clean-up changes.

The adopted rules amend §111.180, Administrative Penalties and Sanctions. The adopted rules make technical changes that reflect changes made by H.B. 4007. The bill repealed the program-specific administrative penalties section in Occupations Code Chapter 401, since it was redundant with the administrative penalties section in Occupations Code Chapter 51, which applies to all the Department's programs. In addition, the adopted rules make a technical clean-up change. This change is part of the licensing and other clean-up changes.

The adopted rules amend §111.200, Registration of Audiologists and Interns in Audiology to Fit and Dispense Hearing Instruments. The adopted rules removed the former reference to the temporary audiology certificate in subsection (b). This change is due to H.B. 4007, which repealed the temporary certificate of registrations in audiology.

The adopted rules amend §111.213, Limitations on the Use of Telecommunications Technology by Speech-Language Pathologists. The adopted rules add provisions regarding supervision of speech-language pathology assistants and interns through the use of telecommunications technology. The adopted rules removed the former provisions that prohibited the use of telecommunications for supervision purposes unless an exception was approved by the Department. These changes are part of the supervision changes.

The adopted rules add new §111.216, Limitations on the Use of Telecommunications Technology by Audiologists. The adopted new §111.216 regarding audiologists is similar to §111.213 regarding speech-language pathologists. The adopted rules add a provision regarding supervision of audiology assistants through the use of telecommunications technology and a prohibition that telehealth services may not be provided by correspondence only. These changes are part of the supervision changes.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the January 26, 2018, issue of the *Texas Register* (43 TexReg 400). The deadline for public comments was February 26, 2018. During the 30-day public comment period the Department received comments from three interested parties, including two individuals and the Texas Speech-Language-Hearing Association. The two individuals commented on several sections of the proposed rules. The public comments received are summarized below.

Comment--The Department received a comment from an individual who stated that not all of the references to the "Council for Academic Accreditation" in the existing rules should have been changed to the "Council for Clinical Certification" in the proposed rules.

Department Response--The Department appreciates the comment and has made the appropriate corrections. The reference to "Council for Clinical Certification" in proposed rule §111.75(b)(3) is correct. The references to "Council for Clinical Certification" in proposed rules §§111.30(b)(6), 111.35(b)(3), 111.40(b)(6), 111.40(f), 111.45(b)(3), and 111.50(b) have been corrected and returned to "Council on Academic Accreditation" as currently referenced in the existing rules.

Comment--The Department received a comment from an individual regarding rule §111.50(a)(3) and (e), regarding the assisting experience for the speech-language pathology assistant license. The commenter wanted to know whether the 25 hours of clinical assisting experience must be earned while "enrolled" as a student, and whether universities could offer students a way to get those hours without being "enrolled" in clinic practicum. The commenter noted that the rules do not specifically state that the hours be earned while the student is "enrolled." The commenter explained that there is an increasing problem that undergraduates finish their degrees without the assisting hours and employers are reluctant to hire them. The commenter asked whether universities could offer a "boot camp" type experience to provide those hours and do some training for the job of a speech-language pathology assistant. Universities may offer the experience in different ways, but however the experience is offered, the universities would provide documentation of the required 25 hours.

Department Response--The Department has reviewed the statute and the existing and proposed rules at 16 TAC §111.50(a) and (e), regarding the speech-language pathology assistant licensing requirements. The statute and rules do not require that the clinical assisting experience hours be obtained while the student is "enrolled". Specifically, existing and proposed rules §111.50(a) and (e) provide that these hours must be obtained "within" an educational institution or in one of its cooperating programs or obtained "through" an accredited college or university. The proposed rules under §111.50(a) removed the language that these hours also may be earned "under the direct supervision at their place of employment," and replaced this language with the statement: "If these hours are not completed, the applicant must complete the Clinical Deficiency Plan under subsection (e)."

In response to the public comment on §111.50(a) and (e), the Department provides this interpretation that the suggested "boot camp" type of experience as explained in the comment letter or other clinical assisting experiences that are obtained within or through an educational institution or in one of its cooperating programs would meet the current statute and rules and would be allowed. The person seeking a speech-language pathology assistant license does not need to earn the clinical assisting experience hours while "enrolled" as a student. The Department did not make any changes to the proposed rules in response to this public comment.

Comment--The Department received a comment from an individual who wanted to change §111.151, Consumer Information and Display of License, regarding the requirement for a licensee to display the license certificate with a current license card in the primary location of practice. The commenter stated this requirement is not realistic in today's healthcare environment where treatment rooms are shared with multiple providers and other specialties and do not allow for personal information with the clinic rooms. Additionally, within a clinic area there are multiple specialties sharing charting rooms with no place to display individual licenses.

Department Response--The Department appreciates the comment, but as the individual noted in the comment letter, these specific provisions were not open for change in this rulemaking. The proposed rules did not make any changes to §111.151(a) and (b). The proposed rules removed subsection (c) regarding the temporary certificate of registration and re-lettered subsection (d) as (c). The Advisory Board recommended to send this issue to a workgroup for study. The workgroup study may result in a possible rulemaking in the future. The Department did not make any changes to the proposed rules in response to this public comment.

Comment--The Department received a comment from an individual who pointed out that rule §111.154(f)(4) states that the supervisor shall comply with the following "supervision ratios" but that (f)(4)(A) and (f)(4)(B) provide for a finite number of assistants and/or interns that a supervisor may supervise. The commenter stated that the rule should allow for a true ratio between supervisors and assistants and/or interns. The commenter provided suggested language to amend (f)(4)(A) and (f)(4)(B) to address sole supervision and shared supervision and provided several scenarios to explain the suggested changes.

Department Response--The Department appreciates the comment and for the opportunity to clarify the provision. The Department agrees that the word "ratio" could be confusing in §111.154(f)(4) where it precedes the set number limits in (f)(4)(A) and (f)(4)(B). The current intent and practice of this rule has been a set number limit, not a ratio, regarding supervising assistants and interns. In addition, the Department staff believe using a ratio system may be difficult to track and may cause confusion. One Advisory Board member responded that the commenter's work situation may be unique and that assistants and interns may rotate through a series of supervisors over the course of their training. The same Advisory Board member discouraged making changes that would loosen the current requirements or that would create confusion or problems. Another Advisory Board member responded that having a set cap on the number of assistants and interns is important guidance that assists licensed speech-language pathologists to manage workloads, but also ensures that the licensed speech-language pathologists are also providing direct client services not just supervising. The Advisory Board did not recommend that the rule be changed to use ratios instead of the set number caps. The Department has removed the words "supervision ratios" in §111.154(f)(4) so that is does not cause confusion with the set number limits under (f)(4)(A) and (f)(4)(B). These limits apply whether there is a single supervisor or multiple supervisors.

During the Advisory Board meeting, it was discussed that the proposed changes to the audiology supervision provisions under §111.154(f)(4)(B) and (C) will align the supervision caps for speech-language pathology and for audiology. This change will allow the audiologist supervisors to use the online supervision reporting system, which is currently used by speech-language pathologists and which allows supervisors to update the supervision records in real time. Use of this online reporting system may help address some of the commenter's concerns in a work environment in which assistants and/or interns may change supervisors on a more frequent basis.

Comment--The Department received a comment from an individual on §111.91(f) regarding the amount and type of supervision under the audiology assistant license. The commenter stated that the proposed total amount of weekly/monthly supervision is appropriate and should be the same regardless of individual or shared supervision. The commenter stated, whether individual or shared, there should be a record of a total of 10 hours per week (or 40 hours per month) of supervision. The commenter stated that hopefully that this is the intent of the rule, since the section no longer states that in the case of multiple supervisors that each person must provide the minimum amount of supervision.

Department Response--The Department appreciates the comment and for the opportunity to clarify the provision. The wording and the intent of the provisions under §111.91(f) is that the supervisor must provide 10 hours per week, or 40 hours per month, of supervision, not that the assistant receives this amount of supervision per week/month. Each supervisor, regardless of individual or multiple supervisors, must provide the required minimum amount of supervision. In addition, each supervisor must submit a Supervisory Responsibility Statement Form as required under §111.91(c)(2). The commenter stated that this section no longer includes a provision about multiple supervisors; however, this is not a provision that the Department removed when relocating the supervision provisions from §111.90 to §111.91 under the proposed rules.

The Advisory Board recommended that §111.91(f) be amended to change the word "The" to "Each" at the beginning of the sentence, so that the sentence reads: "Each supervisor must provide a minimum of ten (10) hours per week, or forty (40) hours per calendar month, of supervision to the assistant." The same provision regarding the amount and type of supervision is located in §111.51(g) for the speech-language pathology assistant license, although the specific amount of supervision per week and per month is different. The Advisory Board recommended that the same change be made to §111.51(g) to clarify that "each" supervisor must provide the minimum amount of supervision. The Department made the recommended changes to §111.91(f) and §111.51(g), as a result of this public comment.

Comment--The Department received a comment from the Texas Speech-Language-Hearing Association (TSHA) that states that it supports the other edits and "clean-up" changes to the rules. This comment was included at the end of the TSHA comment letter, which primarily addressed the proposed telehealth rule (separate rule proposal).

Department Response--The Department appreciates the comment in support of the changes. The Department did not make any changes to the proposed rules in response to this public comment.

On April 4, 2018, the Department received a late public comment on the proposed rules. The Commission previously met on March 27, 2018, and adopted the proposed rules with changes as recommended by the Advisory Board. The Department will not address or respond to this late public comment as part of this rulemaking.

Advisory Board Recommendations and Commission Action

The Speech-Language Pathologists and Audiologists Advisory Board (Advisory Board) met on January 4, 2018, to discuss the proposed rules. The Advisory Board members offered some clean-up and technical changes on the proposed rules. The Advisory Board recommended publication of the proposed rules with the changes discussed in the *Texas Register* for public comment.

The Advisory Board met again on March 6, 2018, to review the public comments received on the proposed rule and to make a recommendation to the Commission regarding the proposed rule. Based on the public comments received, the Advisory Board and the Department made changes to the proposed rules as published. The Advisory Board recommended to the Commission that the proposed rules be adopted with the changes discussed at the Advisory Board meeting to the following sections: §§111.30(b)(6), 111.35(b)(3), 111.40(b)(6), 111.40(f), 111.45(b)(3), 111.50(b), 111.51(g), 111.91(f), and 111.154(f)(4).

At its meeting held on March 27, 2018, the Commission adopted the proposed rules with changes as recommended by the Advisory Board.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §111.2

STATUTORY AUTHORITY

The amendments are adopted under Texas Occupations Code, Chapters 51 and 401, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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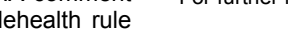

SUBCHAPTER B. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS ADVISORY BOARD

16 TAC §111.10

The amendments are adopted under Texas Occupations Code, Chapters 51 and 401, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER C. EXAMINATIONS

16 TAC §§111.21 - 111.23

The amendments are adopted under Texas Occupations Code, Chapters 51 and 401, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER D. REQUIREMENTS FOR SPEECH-LANGUAGE PATHOLOGY LICENSE

16 TAC §§111.30, 111.35, 111.37

The amendments are adopted under Texas Occupations Code, Chapters 51 and 401, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the adoption.

§111.30. Speech-Language Pathology License--Licensing Requirements.

(a) An individual shall not practice as a speech-language pathologist without a current license issued by the department. An applicant for a speech-language pathology license shall meet the requirements set out in the Act and this section.

(b) Education. The graduate degree shall be completed at a college or university which has a program accredited by a national accrediting organization that is approved by the department and recognized by the United States Secretary of Education under the Higher Education Act of 1965 (20 U.S.C. §1001, et seq.).

(1) Original or certified copies of the transcripts showing the conferred degree shall verify the applicant completed the following:

(A) at least thirty-six (36) semester credit hours shall be in professional course work acceptable toward a graduate degree; and

(B) at least twenty-four (24) semester credit hours acceptable toward a graduate degree shall be earned in the area of speech-language pathology, including normal development and use of speech, language, and hearing; prevention evaluation, habilitation, and rehabilitation of speech, language, and hearing disorders; and related fields that augment the work of clinical practitioners of speech-language pathology.

(2) A maximum of six (6) academic semester credit hours associated with clinical experience and a maximum of six (6) academic semester credit hours associated with a thesis or dissertation may be counted toward the thirty-six (36) hours but not in lieu of the requirements of paragraph (1)(B).

(3) A quarter hour of academic credit shall be considered as two-thirds of a semester credit hour.

(4) An applicant who possesses a master's degree with a major in audiology and is pursuing a license in speech-language pathology may apply if the department has an original transcript showing completion of a master's degree with a major in audiology on file and a letter from the program director or designee of the college or university stating that the individual completed enough hours to establish a graduate level major in speech-language pathology and would meet the academic and clinical experience requirements for a license as a speech-language pathologist.

(5) An applicant whose transcript is in a language other than English or whose degree was earned at a foreign university shall submit an original evaluation form from an approved transcript evaluation service. The transcript evaluation service must determine that the applicant's degree is a master's degree or higher with a major in one of the areas of communicative sciences or disorders. The applicant shall bear all expenses incurred during the procedure.

(6) An applicant who graduated from a college or university not accredited by the ASHA Council on Academic Accreditation shall submit an original signed letter from ASHA stating the Council for Clinical Certification accepted the course work and clinical experience. The applicant shall bear all expenses incurred during the procedure.

(c) Clinical Work. An applicant shall complete at least twenty-five (25) clock hours of supervised observation before completing the minimum of the following hours of supervised clinical direct client contact, which may be referred to as clinical practicum, with individ-

uals who present a variety of communication disorders within an educational institution or in one of its cooperating programs:

(1) 275 clock hours if the master's degree was earned prior to November 10, 1993; or

(2) 350 clock hours if the master's degree was earned between November 10, 1993 and December 31, 2004; or

(3) 400 clock hours if the master's degree was earned on or after January 1, 2005.

(d) Internship. An applicant must have completed an internship in which clinical work has been accomplished in speech-language pathology as set out in §111.41.

(1) An individual shall be licensed under §111.41, prior to the beginning of the internship.

(2) The supervisor of an individual who completed an internship in another state and met the requirements set out in §111.41 shall:

(A) be licensed in that other state; or

(B) hold the ASHA Certificate of Clinical Competence in speech-language pathology if the other state did not require licensing.

(e) Examination. An applicant shall pass the examination referenced under §111.21.

§111.35. Speech-Language Pathology License--Application and Eligibility Requirements.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on current department-approved forms.

(b) An applicant for a speech-language pathology license must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) if not previously submitted when applying for an intern's license, an original or certified copy of the transcript(s), which shows all relevant course work and which shows the applicant possesses a minimum of a master's degree with a major in one of the areas of communicative sciences or disorders;

(3) if the applicant graduated from a college or university with a program not accredited by the ASHA Council on Academic Accreditation, an original signed letter from ASHA stating the Council for Clinical Certification accepted the course work and clinical experience;

(4) if the applicant's transcript is in a language other than English or the degree was earned at a foreign university, an original evaluation form from an approved transcript evaluation service stating that the applicant's degree is a master's degree or higher with a major in one of the areas of communicative sciences or disorders;

(5) a Report of Completed Speech-Language Pathology Internship Form completed by the applicant's department-approved supervisor and signed by both the applicant and the department-approved supervisor;

(6) if the internship was completed out-of-state, one of the following documents regarding the supervisor must be submitted:

(A) if that state requires licensure, a copy of the supervisor's valid license to practice in that state; or

(B) if that state does not require licensure, an original letter from ASHA stating the supervisor held the Certificate of Clinical Competence when the applicant completed the internship;

(7) a Praxis Exam Score Report showing the applicant passed the examination described in §111.21;

(8) proof of successfully completing the Texas Jurisprudence Examination under §111.23; and

(9) the initial application fee required under §111.160.

(c) If not previously submitted when applying for an assistant or intern license, an applicant for a speech-language pathology license must submit a completed legible set of fingerprints, on a department-approved form, to the Department of Public Safety for the purpose of obtaining criminal history record information. An applicant must successfully pass a criminal history background check.

(d) Waiver of Clinical Experience and Examination Requirements. An applicant who currently holds the ASHA Certificate of Clinical Competence may submit official documentation from ASHA of the Certificate of Clinical Competence as evidence that the applicant meets the clinical experience and examination requirements as set out in the Act and this subchapter for a speech-language pathology license. Such an applicant must submit:

(1) an original or certified copy of a signed letter from ASHA, which verifies the applicant currently holds the Certificate of Clinical Competence in the area of speech-language pathology;

(2) an original or certified copy of the transcript(s) showing the conferred degree of all relevant course work which also verifies that the applicant possesses a minimum of a master's degree with a major in one of the areas of communicative sciences or disorders;

(3) the required documents under subsection (b)(1) and (8) and subsection (c); and

(4) the initial application fee required under §111.160.

(e) Upgrade from Intern License to Full License. An applicant, who holds a current Texas intern in speech-language pathology license, may upgrade to a speech-language pathology license by submitting:

(1) a completed upgrade application on a department-approved form;

(2) the required documents under subsection (b)(2), (5), and (7) and subsection (c); and

(3) the initial application fee required under §111.160.

(f) An applicant must complete all licensing requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

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. REQUIREMENTS FOR INTERN IN SPEECH-LANGUAGE PATHOLOGY LICENSE

16 TAC §§111.40 - 111.42, 111.45, 111.47

The amendments and new rules are adopted under Texas Occupations Code, Chapters 51 and 401, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the adoption.

§111.40. Intern in Speech-Language Pathology License--Licensing Requirements--Education and Clinical Work.

(a) An individual shall not practice as an intern in speech-language pathology without a current license issued by the department. An applicant for an intern in speech-language pathology license must meet the requirements under the Act and this section.

(b) Education. The graduate degree shall be completed at a college or university which has a program accredited by a national accrediting organization that is approved by the department and recognized by the United States Secretary of Education under the Higher Education Act of 1965 (20 U.S.C. §1001, et seq.).

(1) Original or certified copies of the transcripts showing the conferred degree shall verify the applicant completed the following:

(A) at least thirty-six (36) semester credit hours shall be in professional course work acceptable toward a graduate degree; and

(B) at least twenty-four (24) semester credit hours acceptable toward a graduate degree shall be earned in the area of speech-language pathology including normal development and use of speech, language, and hearing; prevention evaluation, habilitation, and rehabilitation of speech, language, and hearing disorders; and related fields that augment the work of clinical practitioners of speech-language pathology.

(2) A maximum of six academic semester credit hours associated with clinical experience and a maximum of six academic semester credit hours associated with a thesis or dissertation may be counted toward the thirty-six (36) hours but not in lieu of the requirements of paragraph (1)(B).

(3) A quarter hour of academic credit shall be considered as two-thirds of a semester credit hour.

(4) An applicant who possesses a master's degree with a major in audiology and is pursuing a license in speech-language pathology may apply if the department has an original transcript showing completion of a master's degree with a major in audiology on file and a letter from the program director or designee of the college or university stating that the individual completed enough hours to establish a graduate level major in speech-language pathology and would meet the academic and clinical experience requirements for a license as a speech-language pathologist.

(5) An applicant whose transcript is in a language other than English or whose degree was earned at a foreign university shall submit an original evaluation form from an approved transcript evaluation service. The transcript evaluation service must determine that the applicant's degree is a master's degree or higher with a major in one of the areas of communicative sciences or disorders. The applicant shall bear all expenses incurred during the procedure.

(6) An applicant who graduated from a college or university not accredited by the ASHA Council on Academic Accreditation shall submit an original signed letter from ASHA stating the Council for Clinical Certification accepted the course work and clinical experience. The applicant shall bear all expenses incurred during the procedure.

(c) Clinical Work. An applicant shall complete at least twenty-five (25) clock hours of supervised observation before completing the minimum of the following hours of supervised clinical direct client contact, which may be referred to as clinical practicum, with individuals who present a variety of communication disorders within an educational institution or in one of its cooperating programs:

(1) 275 clock hours if the master's degree was earned prior to November 10, 1993; or

(2) 350 clock hours if the master's degree was earned between November 10, 1993 and December 31, 2004; or

(3) 400 clock hours if the master's degree was earned on or after January 1, 2005.

(d) In the event the course work and clinical experience set out in subsections (b) - (c), were earned more than ten (10) years before the date of application for the intern license, the applicant shall submit proof of current knowledge of the practice of speech-language pathology. Proof of current knowledge may include: recently completing continuing education or other courses; holding a current license in another state; holding a current ASHA certification; or retaking and passing the written examination.

(e) An applicant who successfully completed all education and clinical requirements under this section, but who has not had the degree officially conferred may be licensed as an intern in order to begin the internship but shall submit verification from the program director or designee verifying the applicant has met all academic course work, clinical experience requirements, and completed a thesis or passed a comprehensive examination, if required, and is awaiting the date of next graduation for the degree to be conferred.

(f) An applicant whose master's degree is received at a college or university accredited by the ASHA Council on Academic Accreditation will receive automatic approval of the course work and clinical experience if the program director or designee verifies that all requirements have been met and review of the transcript shows that the applicant has successfully completed at least twenty-four (24) semester credit hours acceptable toward a graduate degree in the area of speech-language pathology.

§111.45. Intern in Speech-Language Pathology License--Application and Eligibility Requirements.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on department-approved forms.

(b) An applicant for an intern in speech-language pathology license must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) if the graduate degree has been conferred, an original or certified copy of the transcript(s), which shows all relevant course work and which shows the applicant possesses a minimum of a master's degree with a major in one of the areas of communicative sciences or disorders;

(3) if the applicant graduated from a college or university with a program not accredited by the ASHA Council on Academic Accreditation, an original signed letter from ASHA stating the Council for Clinical Certification accepted the course work and clinical experience;

(4) if the graduate degree has not been conferred, the Course Work and Clinical Experience Form completed by the university program director or designee of the college or university attended;

(5) if the applicant's transcript is in a language other than English or the degree was earned at a foreign university, an original evaluation form from an approved transcript evaluation service stating that the applicant's degree is a master's degree or higher with a major in one of the areas of communicative sciences or disorders;

(6) an Intern Plan and Agreement of Supervision Form completed by the proposed supervisor and signed by both the applicant and the proposed supervisor;

(7) proof of successfully completing the Texas Jurisprudence Examination under §111.23; and

(8) the initial application fee required under §111.160.

(c) If not previously submitted when applying for an assistant license, an applicant for an intern in speech-language pathology license must submit a completed legible set of fingerprints, on a form prescribed by the department, to the Department of Public Safety for the purpose of obtaining criminal history record information. An applicant must successfully pass a criminal history background check.

(d) An applicant must complete all licensing requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

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. REQUIREMENTS FOR ASSISTANT IN SPEECH-LANGUAGE PATHOLOGY LICENSE

16 TAC §§111.50 - 111.52, 111.55, 111.57

The amendments and new rules are adopted under Texas Occupations Code, Chapters 51 and 401, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the adoption.

§111.50. Assistant in Speech-Language Pathology License-Licensing Requirements--Education and Clinical Observation and Experience.

(a) An individual shall not practice as an assistant in speech-language pathology without a current license issued by the department. An applicant for an assistant in speech-language pathology license must meet the requirement under the Act and this section. The applicant must meet the following requirements:

(1) possess a baccalaureate degree with an emphasis in communicative sciences or disorders;

(2) have acquired at least twenty-four (24) semester credit hours in speech-language pathology and/or audiology with a grade of "C" or above with the following conditions:

(A) at least 18 of the 24 semester credit hours must be in speech-language pathology;

(B) at least three (3) of the 24 semester credit hours must be in language disorders;

(C) at least three (3) of the 24 semester credit hours must be in speech disorders;

(D) the 24 semester credit hours excludes course work such as special education, deaf education, or sign language; and

(E) the 24 semester credit hours must be academic course work and excludes any clinical experience; and

(3) have earned no fewer than twenty-five (25) hours of clinical observation in the area of speech-language pathology and twenty-five (25) hours of clinical assisting experience in the area of speech-language pathology obtained within an educational institution or in one of its cooperating programs. If these hours are not completed, the applicant must complete the Clinical Deficiency Plan under subsection (e).

(b) The baccalaureate degree shall be completed at a college or university which has a program accredited by the ASHA Council on Academic Accreditation or holds accreditation or candidacy status from a recognized regional accrediting agency.

(1) Original or certified copy of the transcripts showing the conferred degree shall be submitted and reviewed as follows:

(A) only course work earned within the past ten (10) years with a grade of "C" or above is acceptable;

(B) a quarter hour of academic credit shall be considered as two-thirds of a semester credit hour; and

(C) academic courses, the titles of which are not self-explanatory, shall be substantiated through course descriptions in official school catalogs or bulletins or by other official means.

(2) In the event the course work and clinical experience set out in subsection (a), were earned more than ten (10) years before the date of application for the assistant license, the applicant shall submit proof of current knowledge of the practice of speech-language pathology to be evaluated by the department. Proof of current knowledge may include: recently completing continuing education or other courses; or holding a current license in another state.

(c) An applicant who possesses a baccalaureate degree with a major that is not in communicative sciences or disorders may qualify for the assistant license. The department shall evaluate transcripts on a case-by-case basis to ensure equivalent academic preparation, and shall determine if the applicant satisfactorily completed twenty-four (24) semester credit hours in communicative sciences or disorders and meets the requirements of 111.50(b)(2), which may include some leveling hours.

(d) Degrees and/or course work received at foreign universities shall be acceptable only if such course work and clinical practicum hours may be verified as meeting the requirements of subsection (a). The applicant must bear all expenses incurred during the procedure. The department shall evaluate the documentation, which shall include an original transcript and an original report from a credential evaluation services agency acceptable to the department.

(e) An applicant who has not acquired the twenty-five (25) hours of clinical observation and twenty-five (25) hours of clinical experience referenced in subsection (a)(3), shall not meet the minimum qualifications for the assistant license. These hours must be obtained through an accredited college or university, or through a Clinical Deficiency Plan. All hours must be completed under in-person, direct supervision. In order to acquire these hours, the applicant shall first obtain the assistant license by submitting the forms, fees, and documentation referenced in §111.55 and include the prescribed Clinical Deficiency Plan to acquire the clinical observation and clinical assisting experience hours lacking.

(1) The licensed speech-language pathologist who will provide the applicant with the training to acquire these hours must meet the requirements set out in the Act and §111.154 and shall submit:

(A) the Supervisory Responsibility Statement Form prescribed under §111.51; and

(B) the prescribed Clinical Deficiency Plan.

(2) The department shall evaluate the documentation and fees submitted to determine if the assistant license shall be issued. Additional information or revisions may be required before approval is granted.

(3) The Clinical Deficiency Plan shall be completed within sixty (60) days of the issue date of the assistant's license or the licensed assistant must submit a new plan.

(4) Immediately upon completion of the Clinical Deficiency Plan, the licensed speech-language pathologist identified in the plan shall submit a statement or information that the licensed assistant successfully completed the clinical observation and clinical assisting experience and that all hours worked by the licensed assistant were under the in-person, direct supervision of the licensed speech-language pathologist. This statement shall specify the number of hours completed and verify completion of the training identified in the Clinical Deficiency Plan.

(5) Department staff shall evaluate the documentation required in paragraph (4) and inform the licensed assistant and licensed speech-language pathologist who provided the training if acceptable.

(6) A licensed assistant may continue to practice under the in-person, direct supervision of the licensed speech-language pathologist who provided the licensed assistant with the training while the department evaluates the documentation identified in paragraph (4). All hours worked by the licensed assistant must be under the in-person, direct supervision of the licensed speech-language pathologist.

(7) In the event another licensed speech-language pathologist shall supervise the licensed assistant after completion of the Clinical Deficiency Plan, a Supervisory Responsibility Statement Form shall be submitted to the department seeking approval for the change in supervision. If the documentation required by paragraph (4), has not been received and approved by the department, approval for the change in supervision shall not be granted.

§111.51. Assistant in Speech-Language Pathology License--Supervision Requirements.

(a) A licensed assistant in speech-language pathology (assistant) must be supervised by a licensed speech-language pathologist who has been approved by the department to serve as the assistant's supervisor (supervisor).

(b) A supervisor must agree to assume responsibility for all services provided by the assistant. The supervisor must comply with the requirements set out in the Act and §111.154.

(c) Supervisory Responsibility Statement Form. A Supervisory Responsibility Statement Form shall be submitted in a manner prescribed by the department by both the applicant and the proposed supervisor. The proposed supervisor must meet with the requirements set out in the Act and §111.154.

(1) Approval from the department shall be required prior to practice by the assistant. The Supervisor Responsibility Statement Form shall be submitted upon:

(A) application for an assistant license;

(B) any changes in supervision; and

(C) the addition of other supervisors.

(2) If more than one speech-language pathologist agrees to supervise the assistant, each proposed supervisor must submit a separate Supervisor Responsibility Statement Form in manner prescribed by the department.

(3) The assistant may not practice without an approved Supervisor Responsibility Statement Form. The supervisor may not allow an assistant to practice before a Supervisor Responsibility Statement Form is approved.

(4) The assistant shall only provide services for the caseload of the assistant's supervisors who have current Supervisor Responsibility Statement Forms on file with the department.

(5) If the supervisor ceases supervision of the assistant, the supervisor shall notify the department, in a manner prescribed by the department, and shall inform the assistant to stop practicing immediately. The supervisor is responsible for the practice of the assistant until notification has been received by the department.

(6) If the assistant's supervisor ceases supervision, the assistant shall stop practicing immediately. The assistant may not practice until a new Supervisor Responsibility Statement Form has been submitted to and approved by the department.

(d) The supervisor shall assign duties and provide appropriate supervision to the assistant.

(e) Direct supervision of the assistant may only occur at the worksite in which the assistant provides services to existing clients or while the assistant provides services to cases previously delegated to the assistant. The supervisor may not make temporary, short-term assignments from the supervisor's caseload to the assistant in order to fulfill direct supervision requirements.

(f) Client Contacts.

(1) Initial contacts directly with the client shall be conducted by the supervisor.

(2) Following the initial contact, the supervisor shall determine whether the assistant has the competence to perform specific duties before delegating tasks.

(g) Amount and Type of Supervision. Each supervisor shall provide a minimum of eight (8) hours per calendar month of supervision to the assistant. This subsection applies whether the assistant is employed full-time or part-time.

(1) At least four (4) hours must be direct supervision. At least two (2) of the direct supervision hours must be in-person. The other two (2) hours may be in-person or by telehealth/telepractice.

(2) The remaining hours may be performed using indirect supervision.

(3) If fewer than four (4) weeks are worked in a calendar month, then the number of hours of supervision provided will be based on the number of weeks worked. Two (2) hours of supervision must be provided for each week worked, including one (1) hour of direct supervision and one (1) hour of indirect supervision.

(4) For the purposes of this subsection the telehealth/telepractice provisions allowed by Subchapter V may be used for up to six (6) hours of supervision (two (2) hours of direct supervision and four (4) hours of indirect supervision).

(5) When determining the amount and type of supervision, the supervisor must consider the skill and experience of the assistant as well as the services to be provided. The supervision hours established in this subsection may be exceeded as determined by the supervisor.

(h) Delegating Clinical Tasks.

(1) The supervisor may delegate specific clinical tasks to an assistant; however, the responsibility to the client for all services provided cannot be delegated.

(2) The supervisor shall ensure that all services are documented and provided in compliance with the Act and this chapter.

(3) The supervisor shall:

(A) in writing, determine the skills and assigned tasks the assistant is able to carry out under §111.52. This document must be agreed upon by the assistant and the supervisor;

(B) notify the client or client's legal guardian(s) that services will be provided by a licensed assistant;

(C) develop the client's treatment program in all settings and review it with the assistant who will provide the service; and

(D) maintain responsibility for the services provided by the assistant.

(i) Admission, Review, and Dismissal Meetings. The supervisor, prior to an Admission, Review and Dismissal (ARD) meeting, shall:

(1) notify the parents of students with speech impairments that services will be provided by the assistant and that the assistant will represent Speech Pathology at the ARD;

(2) develop the student's new Individual Education Program (IEP) goals and objectives and review them with the assistant; and

(3) maintain undiminished responsibility for the services provided and the actions of the assistant.

(j) Records. The supervisor shall maintain the following records.

(1) The supervisor shall maintain for a period of three years supervisory records that verify regularly scheduled monitoring, assessment, and evaluation of the assistant's and client's performance. Such documentation may be requested by the department.

(2) The supervisor shall keep job descriptions and performance records of the assistant. Records shall be current and made available upon request to the department.

(k) Supervision Audits. The department may audit a random sampling of assistants for compliance with this section and §111.154.

(1) The department shall notify the assistant and the supervisor in a manner prescribed by the department that the assistant has been selected for an audit.

(2) Upon receipt of an audit notification, the assistant and the supervisor shall provide in a manner prescribed by the department the requested proof of compliance to the department.

(3) The assistant and the supervisor shall comply with the department's request for documentation and information concerning compliance with the audit.

(l) Notwithstanding the supervision provisions in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

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. REQUIREMENTS FOR TEMPORARY CERTIFICATE OF REGISTRATION IN SPEECH-LANGUAGE PATHOLOGY

16 TAC §§111.60, 111.65, 111.66

The repeals are adopted under Texas Occupations Code, Chapters 51 and 401, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER H. REQUIREMENTS FOR AUDIOLOGY LICENSE

16 TAC §§111.70, 111.75, 111.77

The amendments are adopted under Texas Occupations Code, Chapters 51 and 401, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER I. REQUIREMENTS FOR INTERN IN AUDIOLOGY LICENSE

16 TAC §§111.80 - 111.82, 111.85, 111.87

The amendments and new rules are adopted under Texas Occupations Code, Chapters 51 and 401, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER J. REQUIREMENTS FOR ASSISTANT IN AUDIOLOGY LICENSE

16 TAC §§111.90 - 111.92, 111.95, 111.97

The amendments and new rules are adopted under Texas Occupations Code, Chapters 51 and 401, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the adoption.

§111.91. Assistant in Audiology License--Supervision Requirements.

(a) A licensed assistant in audiology (assistant) must be supervised by a licensed audiologist who has been approved by the department to serve as the assistant's supervisor (supervisor).

(b) A supervisor must agree to assume responsibility for all services provided by the assistant. The supervisor must comply with the requirements set out in the Act and §111.154.

(c) Supervisory Responsibility Statement Form. A Supervisory Responsibility Statement Form shall be submitted in a manner prescribed by the department by both the applicant and the proposed supervisor. The proposed supervisor must meet the requirements set out in the Act and §111.154.

(1) Approval from the department shall be required prior to practice by the licensed assistant in audiology. The Supervisory Responsibility Statement for an Assistant in Audiology Form shall be submitted upon:

(A) application for a license;

(B) any changes in supervision; and

(C) addition of other supervisors.

(2) If more than one audiologist agrees to supervise the assistant, each proposed supervisor must submit a separate Supervisory Responsibility Statement Form in a manner prescribed by the department.

(3) The assistant may not practice without an approved Supervisor Responsibility Statement Form. The supervisor may not allow an assistant to practice before a Supervisor Responsibility Statement Form is approved.

(4) The assistant shall only provide services for the caseload of the assistant's supervisors who have current Supervisor Responsibility Statement Forms on file with the department.

(5) If the supervisor ceases supervision of the assistant, the supervisor shall notify the department, in a manner prescribed by the department, and shall inform the assistant to stop practicing immediately. The supervisor is responsible for the practice of the assistant until notification has been received by the department.

(6) If the assistant's supervisor ceases supervision, the assistant shall stop practicing immediately. The assistant may not practice until a new Supervisor Responsibility Statement Form has been submitted to and approved by the department.

(d) A supervisor shall assign duties and provide appropriate supervision to the assistant.

(e) Client Contacts.

(1) All diagnostic contacts shall be conducted by the supervisor.

(2) Following the initial diagnostic contact, the supervisor shall determine whether the assistant has the competence to perform specific non-diagnostic and non-prohibited duties before delegating tasks as referenced in §111.92(c).

(f) Amount and Type of Supervision. Each supervisor must provide a minimum of ten (10) hours per week, or forty (40) hours per calendar month, of supervision to the assistant. This subsection applies whether the assistant is employed full-time or part-time.

(1) At least one (1) hour per week, or four (4) hours per calendar month, must be direct supervision.

(2) The remaining hours may be performed using indirect supervision.

(3) If fewer than four (4) weeks are worked in a calendar month, then the number of hours of supervision provided will be based on the number of weeks worked. Ten (10) hours of supervision must be provided for each week worked, including one (1) hour of direct supervision.

(4) The supervisor shall provide in-person, direct supervision for the duties described under §111.92(c)(1) - (4).

(5) For the purposes of this subsection, the telehealth and telepractice provisions described under §111.215 may be used except for duties described under §111.92(c)(1) - (4) where the supervisor must provide in-person, direct supervision.

(6) When determining the amount and type of supervision, the supervisor must consider the skill and experience of the assistant as well as the services to be provided. The supervision hours established in this paragraph may be exceeded as determined by the supervisor.

(g) Delegating Clinical Tasks.

(1) Although the supervisor may delegate specific clinical tasks to an assistant, the responsibility to the client for all services provided cannot be delegated.

(2) The supervisor shall ensure that all services are documented and provided in compliance with the Act and this chapter.

(3) The supervisor shall:

(A) in writing, determine the skills and assigned tasks the assistant is able to carry out under §111.92. This document must be agreed upon by the assistant and the supervisor;

(B) notify the client or client's legal guardian(s) that services will be provided by a licensed assistant; and

(C) maintain responsibility for the services provided by the assistant.

(h) Records. The supervisor shall maintain the following records.

(1) Supervisory records shall be maintained by the supervisor for a period of three years which verify regularly scheduled monitoring, assessment, and evaluation of the assistant's and client's performance. Such documentation may be requested by the department.

(2) The supervisor shall keep job descriptions and performance records. Records shall be current and be made available upon request to the department.

(i) Supervision Audits. The department may audit a random sampling of assistants for compliance with this section and §111.154.

(1) The department shall notify an assistant and the supervisor in a manner prescribed by the department that the assistant has been selected for an audit.

(2) Upon receipt of an audit notification, the assistant and the supervisor, who agreed to accept responsibility for the services provided by the assistant, shall provide the requested proof of compliance to the department in a manner prescribed by the department.

(3) The assistant and the supervisor shall comply with the department's request for documentation and information concerning compliance with the audit.

(j) Notwithstanding the supervision provisions in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

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 K. REQUIREMENTS FOR AUDIOLOGY TEMPORARY CERTIFICATE OF REGISTRATION

16 TAC §§111.100, 111.105, 111.106

The repeals are adopted under Texas Occupations Code, Chapters 51 and 401, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER L. REQUIREMENTS FOR DUAL LICENSE IN SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

16 TAC §111.115, §111.117

The amendments are adopted under Texas Occupations Code, Chapters 51 and 401, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER O. RESPONSIBILITIES OF THE COMMISSION AND THE DEPARTMENT

16 TAC §111.140

The amendments are adopted under Texas Occupations Code, Chapters 51 and 401, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER P. RESPONSIBILITIES OF THE LICENSEE AND CODE OF ETHICS

16 TAC §111.151, §111.154

The amendments are adopted under Texas Occupations Code, Chapters 51 and 401, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the adoption.

§111.154. Requirements, Duties, and Responsibilities of Supervisors and Persons Being Supervised.

(a) A licensee must have two years of professional experience in providing direct client services in the area of licensure in order to supervise an intern or assistant. The licensee's internship year shall be counted toward the two years of experience.

(b) A licensee may not supervise an individual that is related to the licensee within the first degree of consanguinity, as determined under Government Code, Chapter 573, Subchapter B.

(c) A supervisor of an intern in speech-language pathology must be a licensed speech-language pathologist who is approved by the department and who possesses at least a master's degree with a major in one of the areas of communicative sciences or disorders.

(d) A supervisor of an assistant in speech-language pathology must be a licensed speech-language pathologist who is approved by the department.

(e) A supervisor of an intern in audiology or an assistant in audiology must be a licensed audiologist who is approved by the department.

(f) A supervisor of an intern or assistant shall:

(1) ensure that all services provided are in compliance with this chapter and the Act, such as verifying:

(A) the intern or assistant holds a current license;

(B) the supervisor has been approved by the department;

(C) the practice and duties of the intern or assistant are appropriate; and

(D) the intern or assistant is qualified to perform the procedure;

(2) be responsible for all client services performed by the intern or assistant;

(3) provide appropriate supervision after the department approves the supervisory agreement; and

(4) comply with the following:

(A) supervise no more than a total of four (4) speech-language pathology interns and/or assistants; or

(B) supervise no more than a total of four (4) audiology interns and/or assistants.

(g) In addition to the provisions listed in subsection (f), a supervisor of an assistant shall:

(1) be responsible for evaluations, interpretation, and case management; and

(2) not designate anyone other than a licensed speech-language pathologist or intern in speech-language pathology to represent speech-language pathology to an Admission, Review, and Dismissal (ARD) meetings, except as provided by §111.51 and §111.52.

(h) A licensed intern or assistant shall abide by the decisions made by his or her supervisor relating to the intern's or assistant's practice and duties. If the supervisor requests that the intern or assistant violate this chapter, the Act, or any other law, the intern or assistant shall refuse to do so and immediately notify the department and any other appropriate authority.

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SUBCHAPTER Q. FEES

16 TAC §111.160

The amendments are adopted under Texas Occupations Code, Chapters 51 and 401, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER R. COMPLAINTS

16 TAC §111.171

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The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER S. ENFORCEMENT PROVISIONS

16 TAC §111.180

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The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER U. FITTING AND DISPENSING OF HEARING INSTRUMENTS

16 TAC §111.200

The amendments are adopted under Texas Occupations Code, Chapters 51 and 401, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER V. TELEHEALTH

16 TAC §111.213, §111.216

The amendments and new rules are adopted under Texas Occupations Code, Chapters 51 and 401, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER V. TELEHEALTH

16 TAC §111.212

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 111, Subchapter V, §111.212, regarding the Speech-Language Pathologists and Audiologists program, without changes to the proposed text as published in the January 26, 2018, issue of the *Texas Register* (43 TexReg 433). The rules will not be republished.

JUSTIFICATION AND EXPLANATION OF THE RULES

The adopted rule is a result of changes in regulation involving telepractice and telehealth, specifically related to in-person initial contact. According to the U.S. Federal Trade Commission staff, of the 19 states and the District of Columbia that have telepractice laws, rules, or policies for speech-language pathology or audiology, Texas is one of only three states that has an in-person initial contact or evaluation requirement. (Source: Letter dated November 29, 2016, from the U.S. Federal Trade Commission (FTC) staff to the Delaware Board of Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers (DE Board) regarding the DE Board's proposed telepractice rules.)

In the FTC letter, the FTC staff discussed various regulations and developments in the use of telepractice to deliver speech-language pathology and audiology services, and the potential increase in competition and access to services through telepractice. The FTC staff encouraged the DE Board to reconsider its proposed telepractice rules by allowing licensees to determine whether telepractice is appropriate for an initial evaluation and by eliminating the requirement that all initial evaluations must be in-person.

In addition, the Texas Legislature enacted S.B. 1107, 85th Legislature, Regular Session (2017). This bill, in part, addressed provisions in the Texas Medical Board's statute and rules regarding telemedicine and face-to-face contact with patients. The bill also included provisions regarding telehealth, including provisions that the standard of care for services provided by telehealth is the same as the standard of care for services provided in-person, and that a regulatory agency cannot adopt rules that would impose a higher standard of care for telehealth services than for services provided in-person.

The Texas Department of Licensing and Regulation (Department) viewed these changes and others as guidance in reviewing its existing telehealth/telepractice rules. The Department amended §111.212 due to changes in regulation regarding telehealth/telepractice related to in-person initial contact.

The adopted rule is necessary to eliminate a restriction on the use of telehealth by speech-language pathologists. Specifically, the adopted rule eliminates the requirement that the initial contact with a client must be in-person at the same physical location to determine the client's candidacy for telehealth before any services can be provided by telehealth. The adopted rule eliminates an unnecessary restriction that may be viewed as anti-competitive or as an obstacle to obtaining or providing speech-language pathology services.

SECTION-BY-SECTION SUMMARY

The adopted rule amends §111.212, Requirements for the Use of Telehealth by Speech-Language Pathologists. The adopted rule amends subsection (h) by eliminating the requirement that a speech-language pathologist's initial contact with a client must be at the same physical location to determine the client's candidacy for telehealth before any services can be provided by telehealth. The adopted rule allows a speech-language pathologist's initial contact with a client to be either at the same physical location or through telehealth/telepractice, as determined appropriate by the licensed speech-language pathologist.

The language in former subsection (h) related to determining the client's candidacy for telehealth has been modified and relocated to new subsection (i). New subsection (i) provides that the speech-language pathologist shall consider relevant factors including the client's behavioral, physical, and cognitive abilities in determining the appropriateness of providing services via telehealth/telepractice. This determination is not tied to the initial contact with the client.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the January 26, 2018, issue of the *Texas Register* (43 TexReg 433). The deadline for public comments was February 26, 2018. During the 30-day public comment period the Department received comments from seven interested parties, consisting of six individuals and the Texas Speech-Language-Hearing Association (TSHA). The public comments received are summarized below.

Comment--The Department received a comment from an individual who supports eliminating the current rule that requires "teletherapists to have first contact in person or conduct an initial evaluation in person." The comment letter stated that the individual is a teletherapist who lives in Texas but does not see clients in Texas because of the current rule. The individual stated that other states do not have this rule. The individual explained that eliminating the current rule would allow the individual to work with clients in Texas.

Department Response-- The Department appreciates the comment in support of the proposed rule and the information provided regarding the impact of the current rule and the proposed rule on the commenter's practice and the information about other

states not having this rule. The Department did not make any changes to the proposed rule based on the public comment.

Comment--The Department received a comment from an individual who supports the rule change, but wants the change expanded to audiologists. The individual noted that the rule change only affects telepractice for speech-language pathologists and asked if this rule change could be expanded to amend the same requirement currently in place for audiology telepractice. The individual requested information regarding how to send a request for a rule change.

Department Response-- The Department appreciates the comment in support of the proposed rule regarding telepractice for speech-language pathologists. Regarding the audiology telepractice rules, there is not a similar in-person initial contact requirement for audiologists in rule 16 TAC §111.215, Requirements for Providing Telepractice Services in Audiology. There is an in-person initial contact requirement in the joint rules with the Hearing Instrument Fitters and Dispensers regarding fitting and dispensing hearing instruments by telepractice (16 TAC §111.232(j) and §112.150(l)). These joint rules have been sent to a joint workgroup of the Speech-Language Pathologists and Audiologists Advisory Board and the Hearing Instrument Fitters and Dispensers Advisory Board for review and future revision.

The requirements for requesting a rule change are set out under 16 Texas Administrative Code §60.102, Petition for Adoption of Rules. This rule is part of the Department's procedural rules under 16 TAC Chapter 60, which are posted on the Department's website. The Department did not make any changes to the proposed rule based on the public comment.

Comment--The Department received a comment from an individual who supports the proposed rule change. The individual stated that telehealth services "are designed to bring expert clinicians to those who are either living too far away from services, cannot physically access services, or who wish a particular type of service that is out of reach. In addition, telehealth services provide clients with more choices." The individual stated that the current restriction creates barriers and that allowing telehealth for initial contact and assessment will improve services and will be in line with other states. The individual stated that a "need for consistency across states, is a growing concern and a topic in discussion in ASHA circles."

Department Response-- The Department appreciates the comment in support of the proposed rule and the information provided regarding telehealth services, the impact of the current rule and the proposed rule on providing services, the alignment of the proposed rule with other states, and the discussions that are happening in the American-Speech-Language-Hearing Association (ASHA) community. The Department did not make any changes to the proposed rule based on the public comment.

Comment--The Department received a comment from an individual who would like to see the initial in-person contact requirement waived or removed. The individual, who owns a clinic, would like to provide services to people in underserved areas in Texas, but is unable to do so because of the current rule. The individual stated that there is very little physical touching between the licensed speech pathologist and the patient and that a person "on the ground" would be able to aid with an online evaluation. The individual further stated that "other companies are now offering the ability to practice telehealth from outside of Texas for a private fee that is often inflated. Having the ability to assess and treat via telehealth will allow Texans across the state to be served by other Texans for a fair, market rate. Additionally, insurance companies have all approved the use of teletherapy for speech pathology, including the American Speech and Hearing Association. The removal of this rule will open the door for under-served areas to have speech pathologists help where needed at a fair cost."

Department Response-- The Department appreciates the comment in support of the proposed rule and the information provided regarding speech-language pathology services, the impact of the current rule and the proposed rule on providing and obtaining services in Texas, and the approved use of telehealth for speech pathology by insurance companies and the association. The Department did not make any changes to the proposed rule based on the public comment.

Comment--The Department received a comment from an individual who supports "the proposed rule change eliminating the need for an initial in person contact prior to initiating tele therapy services." The comment stated that the individual has worked in California and Illinois via teletherapy and has "found student success with evaluations as well as therapy without the need for an initial contact in person."

Department Response-- The Department appreciates the comment in support of the proposed rule and the information provided regarding the use and success of teletherapy in other states. The Department did not make any changes to the proposed rule based on the public comment.

Comment--The Department received a comment from an individual who supports removing the initial in-person requirement, whether through the proposed amendment or the repeal of the current rule. The individual is licensed in several states including Texas. The individual currently works as a teletherapist serving students in three different school districts around the United States.

The comment explained the individual's experience with schools and school districts that have chronic and consistent shortages of speech-language pathologists and that teletherapy is "a must for these schools". The individual stated that teletherapy is reducing the provider gap, but speech-language pathologists "need the option to use teletherapy for speech assessments." The current rule, which requires initial in-person contact for assessment, is delaying services for schools that do not have an onsite speech-language pathologist to conduct the assessment. The individual stated that students "must wait until a therapist is able to travel to the school; this wait can be weeks."

The individual stated that teletherapy "is a proven service mechanism and the students I have served have thrived using this mechanism. I am a trained professional who is comfortable using teletherapy and I am able to assess a student's needs and address the issue if teletherapy is not appropriate for a student."

The individual also stated that "as part of my SLP license I may not 'engage in unprofessional conduct that endangers the health, welfare, or safety of the public'. . . and I may only 'render those telepractice services that are within the course and scope of [my] licensure and competence"…. I am already bound to ensure that I am comfortable and competent with the technology and its abilities and limits, and any service or assessment I may do via teletherapy is consistent with in-person services and does not harm the patient. Our licensure already ensures proper services for patients at all stages and thus restricting telepractice, even when done with good intent, only hampers our ability to provide the best possible services to all of our students."

Department Response-- The Department appreciates the comment in support of the proposed rule and the information provided regarding the shortage of speech-language pathologists in school districts, the impact of the current rule on school districts, the commenter's experiences in successfully using teletherapy, and the standard of care in using telehealth. The Department did not make any changes to the proposed rule based on the public comment.

Comment--The Department received a comment from the Texas Speech-Language-Hearing Association (TSHA). TSHA expressed concerns with the proposed rule change to §111.212(h), and asked that the current requirement not be changed.

The TSHA comment expressed concerns that the proposed rule conflicts with "best practices." (A specific set of best practices was not referenced or provided with the comment letter.) The comment stated: "Best practice dictates that the responsible fully licensed SLP must evaluate and determine the best course of treatment for a client, since they are ultimately responsible. … [The] assessment and ultimate decision of the best means by which therapy (if indicated) should be provided must be made by a fully licensed SLP in a face-to-face meeting with the client, in accordance with best practices."

The TSHA comment also expressed concerns that the proposed rule "challenges the limits of our code-of-ethics." (A specific code of ethics was not referenced or provided with the comment letter.)

The TSHA comment recognized that the current rule language has been challenged by the U.S. Federal Trade Commission (FTC) in other regions. However, the comment stated that the licensing statute is a public protection act and "should not be compromised to accommodate the wishes of therapy providers who do not have fully licensed SLP's available on-site to provide services. Quality care for the citizens of Texas should be the mantra for the delivery of our services."

Department Response-- The Department appreciates the comment and the concerns expressed. The Department will address those concerns in its response below; however, the Department did not make any changes to the proposed rule based on the public comment.

Best Practices

Regarding the concern about "best practices," the Department agrees that the licensed speech-language pathologist must evaluate and determine the best course of treatment for a client since the licensed speech-language pathologist is ultimately responsible. The proposed rule provides that the determination, regarding whether the initial contact with a client will be in person or through telehealth, will be made by the licensed speech-language pathologist. The licensed speech-language pathologist will use his or her professional judgment in determining whether the use of telehealth is appropriate. The proposed rule also requires the licensed speech-language pathologist to consider relevant factors in determining the appropriateness of providing services via telehealth/telepractice.

The former rule contained a blanket requirement that all initial contacts must be in person, which does not allow for the professional judgment of the licensed speech-language pathologist. The proposed rule replaces the across-the-board restriction with a provision that allows the licensed speech-language pathologist to make the determination whether in person contact or telepractice is appropriate for an initial contact with a client.

A specific set of best practices was not referenced or provided with the TSHA comment letter. Department staff reviewed the TSHA website (http://www.txsha.org/) and were unable to locate any documents identified as "best practices" documents. The TSHA website contained a page on "Telepractice Resources" (http://www.txsha.org/page/telepractice-resources); however, the public pages (pages that were accessible and not restricted to members only) did not include any "best practices" documents or any statements that the initial contact with the client must be in-person. The TSHA "Professional Resources" page (http://www.txsha.org/professional_resources) included a list of topics with links to the American Speech-Language-Hearing Association (ASHA) website. The Telepractice topic linked to the ASHA Practice Portal website on Telepractice.

The Department staff reviewed the American Speech-Language-Hearing Association (ASHA) website (https://www.asha.org/). Under the ASHA Practice Portal on Telepractice (https://www.asha.org/Practice-Portal/Professional-Issues/Telepractice/), there is a variety of information under the tabs: Overview, Key Issues, Resources, and References.

Under the Telepractice Key Issues tab, there are 11 key issues listed, and three of those issues appear to be most relevant to the proposed rules.

(https://www.asha.org/PRPSpecificTopic.aspx?folderid=8589934956&section=Key_Issues),

Roles and Responsibilities. Under this key issue, the provisions state that the responsibilities of the speech-language pathologist include: (1) "selecting clients who are appropriate for assessment and intervention services via telepractice"; and (2) "selecting and using assessments and interventions that are appropriate for the technology being used and that take into consideration client and disorder variables".

Client Selection. Under this key issue, the provisions state: "Because clinical services are based on the unique needs of each individual client, telepractice may not be appropriate in all circumstances or for all clients. Candidacy for receiving services via telepractice should be assessed prior to initiating services. The client's culture, education level, age, and other characteristics may influence the appropriateness of audiology and speech-language services provided via telepractice." This provision also includes a list of factors that may impact the client's ability to benefit from telepractice (physical and sensory characteristics; cognitive, behavioral and/or motivation characteristics; communication characteristics; and client support resources). These client selection provisions, however, do not include any statements that require in-person initial contact with all clients or require face-to-face meetings for assessments.

Practice Areas. Under this key issue, the speech-language pathologist provisions state: "Telepractice is being used in the assessment and treatment of a wide range of speech and language disorders," and it goes on to list a variety of disorders with cites to the research.

The Department staff was not able to locate any "best practices" documents or statements that state that the initial contact between the licensed speech-language pathologist and the client must be in-person, face-to-face.

Code of Ethics

Regarding the concerns about the code of ethics, the Department does not believe that the proposed rule conflicts with

the speech-language pathologists' code of ethics as set out in existing rule 16 TAC §111.155, Standards of Ethical Practice (Code of Ethics). The proposed rule does not require or permit licensed speech-language pathologists to violate their professional responsibilities or any code of ethics in delivering services to clients by telehealth/telepractice. In addition, 16 TAC §111.212 includes provisions that require licensed speech-language pathologists to work within their scope of practice and competence related to the use of telepractice.

A specific code of ethics was not referenced or provided with the TSHA comment letter. Department staff reviewed the Code of Ethics published on the TSHA website (http://www.txsha.org/code_of_ethics) and the Code of Ethics published on the ASHA website (https://www.asha.org/Code-of-Ethics/). Neither associations' Code of Ethics contained provisions that required in-person initial contact prior to the use of telehealth services or contained statements indicating that the proposed rule would cause speech-language pathologists to violate a specific code of ethics.

Public Protection and Quality Care

Regarding the concern about protecting the public and delivering quality care, the Department agrees that one of the primary purposes of the speech-language pathologists licensing statute and rules is protecting the public and ensuring the delivery of quality care and services. The Department believes the proposed rule protects the public and promotes the delivery of quality care by removing an unnecessary barrier for licensed speech-language pathologists and for clients seeking services.

The proposed rule eliminates a barrier to licensed speech-language pathologists providing services by eliminating a restriction on the speech-language pathologist's professional judgment and putting the determination about the appropriateness of the use of telehealth/telepractice in the hands of the licensed speech-language pathologist. The public benefit will be the elimination of a restriction on the use of telehealth, which may make it easier for qualified, licensed individuals to provide speech-language pathology services remotely.

In addition, the proposed rule eliminates a barrier to clients having access to and receiving services. It would benefit clients, especially those who do not live close to licensed speech-language pathologists, by saving the clients time and travel costs associated with attending an initial visit at the same physical location as the licensed speech-language pathologist. As noted in the TSHA comment, some clients will thrive in therapy using telepractice. The Department wants to eliminate an unnecessary barrier for clients receiving services through telepractice.

Regarding the concerns about the quality of service provided through telehealth, the services provided through telehealth must be delivered at the same standard of care as services provided in person. The existing rules in Subchapter V, Telehealth, including §111.212, already establish protections regarding the delivery and quality of services provided by telehealth/telepractice.

On April 4, 2018, the Department received a late public comment on the proposed rule. The Commission previously met on March 27, 2018, and adopted the proposed rule without changes as recommended by the Advisory Board. The Department will not address or respond to this late public comment as part of this rulemaking.

Advisory Board Recommendations AND COMMISSION ACTION

The Department staff made a presentation at the Speech-Language Pathologists and Audiologists Advisory Board (Advisory Board) meeting on June 30, 2017, regarding the trends in regulation involving telehealth/telepractice and in-person initial contact with clients.

Draft options for the proposed rule were presented to and discussed by the Advisory Board at its meetings on November 15, 2017, and January 4, 2018. The proposed rule reflected those discussions with Advisory Board members and Department staff and reflected the option selected by the Advisory Board.

At its meeting on January 4, 2018, the Advisory Board voted and recommended that the proposed rule be published in the *Texas Register* for public comment.

The Advisory Board met again on March 6, 2018, to review the public comments received on the rule and to make a recommendation to the Commission regarding the proposed rule. Based on the public comments received, the Advisory Board did not recommend any changes to the proposed rule as published. The Advisory Board voted and recommended that the Commission adopt the proposed rule as published.

At its meeting held on March 27, 2018, the Commission adopted the proposed rule without changes as recommended by the Advisory Board.

STATUTORY AUTHORITY

The amendments are adopted under Texas Occupations Code, Chapters 51 and 401, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 112. HEARING INSTRUMENT FITTERS AND DISPENSERS

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 112, Subchapter A, §112.2; Subchapter B, §112.10; Subchapter C, §§112.21 - 112.24, and 112.26; Subchapter D, §§112.30, 112.32, and 112.33; Subchapter E, §112.40 and §112.42; Subchapter H, §112.70; Subchapter I, §112.80; Subchapter J, §112.92 and §112.95; Subchapter

L, §112.110; Subchapter M, §112.120; and Subchapter N, §112.130; and adopts the repeal of existing rule Subchapter N, §112.133, regarding the Hearing Instrument Fitters and Dispensers program, without changes to the proposed text as published in the February 9, 2018, issue of the *Texas Register* (43 TexReg 695). The rules will not be republished.

The Commission also withdraws the proposed rules at 16 TAC, Chapter 112, Subchapter F, §§112.50, 112.52, and 112.53, regarding the Hearing Instrument Fitters and Dispensers program, as published in the February 9, 2018, issue of the *Texas Register* (43 TexReg 695).

JUSTIFICATION AND EXPLANATION OF THE RULES

These adopted rules are necessary to implement House Bill (HB) 4007 and HB 1543, 85th Legislature, Regular Session (2017) and to make clean-up changes. These three categories of rule changes have been combined into one adoption, since there is overlap in a few of the affected rule sections and this combined adoption eliminates the need for separate rulemakings.

The adopted rules implement HB 4007, 85th Legislature, Regular Session (2017). HB 4007, in part, removed certain barriers, redundancies, and impediments regarding the Hearing Instrument Fitters and Dispensers program. The bill clarified the statute's applicability; removed the pre-appointment residency requirements for advisory board membership; removed barriers for out-of-state license applicants; removed barriers and updated provisions for temporary training permit holders; updated continuing education alternatives and exemptions; deleted prohibitions involving the fitting and dispensing of hearing instruments that were sold by mail and the selling of hearing instruments by mail; repealed the requirement that the owner of a dispensing practice must hold a hearing instrument fitter and dispenser license; and repealed provisions regarding administrative penalties and civil penalties, that are already included in Occupations Code Chapter 51, the Commission's and the Texas Department of Licensing and Regulation (Department)'s enabling statute.

The adopted rules implement HB 1543, 85th Legislature, Regular Session (2017). HB 1543 added a new section to the statute regarding client access to records. The adopted rules add a corresponding provision to the rules.

The adopted rules also make clean-up changes identified by Department staff since the Hearing Instrument Fitters and Dispensers program was transferred from the Department of State Health Services (DSHS) to the Department effective October 3, 2016, pursuant to Senate Bill (SB) 202, 84th Legislature, Regular Session (2015).

SECTION-BY-SECTION SUMMARY

The adopted rules amend §112.2, Definitions. The adopted rules eliminate the definitions of "ownership of dispensing practice" and "selling of hearing instruments by mail.' These changes are a result of HB 4007

The adopted rules amend §112.10, Membership. The adopted rules eliminate the pre-appointment residency requirements for advisory board membership. These changes are a result of HB 4007.

he adopted rules amend §112.21, Examination Qualifications. The adopted rules revise subsection (f) by adding clarifying language and removing the former second sentence, which is not applicable to this section. The adopted rules also use lower case for "jurisprudence examination." These changes are part of the clean-up changes.

The adopted rules amend §112.22, Examination Tests and Contents. The adopted rules update the provision regarding practical exams, use lower case for "jurisprudence examination," and update the list of exam topics to match the statute. These changes are part of the clean-up changes.

The adopted rules amend §112.23, Examination Scores and Results. The adopted rules clarify "parts of the examination," clarify that the department or the department's designee notifies an applicant regarding scores, and use lower case for "jurisprudence examination." These changes are part of the clean-up changes.

The adopted rules amend §112.24, Failure of Examination. The adopted rules add the applicant who holds a current out-of-state license to this section. The statute no longer prohibits an applicant with an out-of-state license from retaking the examination if the applicant fails the examination. This change is a result of HB 4007. The adopted rules also re-write the provision for clarify purposes. These changes are part of the clean-up changes.

The adopted rules amend §112.26, Jurisprudence Examination. The adopted rules use lower case for "jurisprudence examination." These changes are part of the clean-up changes.

The adopted rules amend §112.30, Hearing Instrument Fitter and Dispenser License--Application and Eligibility Requirements. The adopted rules clarify the fee language. This change is part of the clean-up changes.

The adopted rules amend §112.32, Hearing Instrument Fitter and Dispenser License--License Term; Renewals. The adopted rules remove former subsection (c)(2) and add subsection (d) to clarify that a licensee must successfully pass a criminal history background check in order to renew the license; however, the licensee does not need to submit new fingerprints. The adopted rules also clarify the fee language and the continuing education provision. These changes are part of the clean-up changes.

The adopted rules amend §112.33, Application by License Holder From Another State. The adopted rules add the fingerprint criminal history background check requirement to reflect the statutory requirement and the current practice; add the fee provision to reflect the current license application requirements; and use lower case "jurisprudence examination." These changes are part of the clean-up changes.

In addition, the adopted rules amend §112.33 by removing the requirement that the applicant held a license in another state for at least three years preceding the date of application. The adopted rules also remove former subsection (h), regarding an applicant who fails an examination may not retake the examination and must start completely over with a temporary training permit. These changes are a result of HB 4007.

The adopted rules amend §112.40, Apprentice Permit--Application and Eligibility Requirements. The adopted rules use lower case "jurisprudence examination." These changes are part of the clean-up changes.

The adopted rules amend §112.42, Apprentice Permit--Permit Term; Extension. The adopted rules add a provision requiring a criminal history background check for extensions and add a clarifying statement that the permit may only be extended once. These changes are part of the clean-up changes.

The adopted rules amend §112.70, Continuing Education--Hours and Courses. The adopted rules remove former

subsection (f) regarding taking the licensing examination to fulfill the continuing education requirement. The adopted rules also remove the former continuing education exemption regarding certain military members. Provisions regarding military members and continuing education are included in Occupations Code Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses, and in the Department's procedural rules under 16 TAC Chapter 60, Subchapter K, Licensing Provisions Related to Military Service Members, Military Veterans, and Military Spouses. These changes are a result of HB 4007.

In addition, the adopted rules clarify the terminology and requirements under §112.70. The adopted rules clarify that a license holder must complete 20 continuing education hours during each license term, rather than during each "two-year renewal period." The adopted rules also add a cross-reference under subsection (b) to the exceptions provided under re-lettered subsection (j). These changes are part of the clean-up changes.

The adopted rules amend §112.80, Rules. The adopted rules remove the former placeholder language and insert the specific citation to 16 TAC Chapter 100, General Provisions for Health-Related Programs. These changes are part of the clean-up changes.

The adopted rules amend §112.92, Consumer Information. The adopted rules expand the title and scope of the section to include client records. The adopted rules add a new subsection (b), which requires a licensee or a hearing instrument fitting and dispensing practice to provide to a client, who provides a signed, written request, a copy of the client's records that pertain to the testing for, and fitting and dispensing of, hearing instruments. These changes are a result of HB 1543.

The adopted rules amend §112.95, Information on Prospective Amplification Candidates. The adopted rules amend the rule language to match the statute. This change is part of the clean-up changes.

The adopted rules amend §112.110, Fees. The adopted rules amend the provisions regarding examination fees, to specify that these fees are determined by and payable to the Department's designee. This change reflects the practice since the Hearing Instrument Fitters and Dispensers program was transferred from DSHS to the Department effective October 3, 2016. These changes are part of the clean-up changes.

The adopted rules amend §112.120, Complaints Regarding Standard of Care. The adopted rules remove the former placeholder language and insert the specific citation to 16 TAC Chapter 100, General Provisions for Health-Related Programs. These changes are part of the clean-up changes.

The adopted rules amend §112.130, Administrative Penalties and Sanctions. The adopted rules make a technical change that reflects the change made by HB 4007. The bill repealed the program-specific administrative penalties section in Occupations Code Chapter 402. Occupations Code Chapter 51, which applies to all the Department's programs, includes administrative penalties provisions, which will apply to the Hearing Instrument Fitters and Dispensers program.

The adopted rules repeal existing rule §112.133, Civil Penalty. The adopted rules repeal this section to reflect the change made by HB 4007. The bill repealed the program-specific civil penalty section in Occupations Code Chapter 402. Occupations Code Chapter 51, which applies to all the Department's programs, includes a civil penalty section, which will apply to the Hearing Instrument Fitters and Dispensers program.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the February 9, 2018, issue of the *Texas Register* (43 TexReg 695). The deadline for public comments was March 12, 2018. During the 30-day public comment period, the Department received public comments from two interested parties, consisting of the Texas Speech-Language-Hearing Association and the Texas Hearing Aid Association. The public comments received are summarized below.

Comment--The Department received a comment from the Texas Speech-Language-Hearing Association in support of the proposed changes to the rules under 16 TAC Chapter 112.

Department Response--The Department appreciates the comment in support of the proposed rules. The Department did not make any changes to the proposed rule based on the public comment.

Comment--The Department received a comment from the Texas Hearing Aid Association (THAA) opposing the proposed changes to §§112.50, 112.52, and 112.53, regarding the temporary training permit requirements. THAA expressed concerns that the proposed rules remove the safeguard provisions that were repealed in HB 4007, but they do not include any new provisions to prevent the issue of the "perpetual permit holder." The comment expressed concerns that "under the proposed rules, a person could receive multiple temporary permits to fit and dispense hearing aids to the public and never have completed the 150 hours of required training - never have to sit for, or pass, the written examination - and never have to demonstrate to an exam rater that he/she can fit a hearing aid by taking and passing the state's practical exam." (Italicized text contained in the comment letter has been removed.). THAA expressed concerns that a person could become a "perpetual temporary permit holder."

THAA stated that there "are legitimate reasons why some people need a second permit to complete the training process and pass the state's written and practical examination, and THAA supports amending the rules to allow for an unconditional second permit to help these people succeed in becoming a licensed hearing aid dispenser." (Bold and underlined text contained in the comment letter has been removed.). THAA stated that this was a balanced approach that "provides more time to complete the temporary permit requirements and prevents long-term abuse of the temporary permit process." (Italicized text contained in the comment letter has been removed.). THAA offered specific amendment language to §112.52.

THAA recommended that the Commission sever the proposed changes to §§112.50, 112.52, and 112.53 from this rulemaking and start a new rulemaking to make the specified changes to these three sections. In the alternative, if the Commission proceeds with the current rulemaking, THAA requested that the Commission "instruct Department staff to proceed as swiftly as possible with a new rulemaking proceeding to amend §112.52" as specified in the comment letter. (Italicized text contained in the comment letter has been removed.).

In addition, THAA made an oral public comment on the proposed rules during the Hearing Instrument Fitters and Dispensers Advisory Board (Advisory Board) meeting on March 21, 2018. The

THAA representative referred the Advisory Board members to the THAA comment letter that had been submitted and highlighted THAA's concerns and recommendations for consideration by the Advisory Board.

Department Response--The Department appreciates the comment on the proposed rules and the information provided regarding the issue of the "perpetual temporary training permit." The Department also appreciates the new suggested language for the temporary training permit provisions under §112.52, Temporary Training Permit--Permit Term; Extension.

At the Advisory Board meeting on January 10, 2018, the Advisory Board discussion primarily focused on Occupations Code §402.251(b), as amended by HB 4007, and proposed rule 16 TAC §112.50, Temporary Training Permit--Application and Eligibility Requirements. The Advisory Board discussed the reasons why persons may be seeking or needing subsequent temporary training permits. As part of the discussion, the Department had provided the Advisory Board with copies of the position paper submitted by THAA dated November 21, 2017, on the changes to Occupations Code §402.251(b) and THAA's recommendation for proposed rules that require at least a 6-month waiting period before a second temporary training permit could be issued. A workgroup was appointed to study 16 TAC §112.50 related to Occupations Code §402.251(b) and the issues regarding temporary training permits.

Based on this public comment, the Department recommended withdrawing §§112.50, 112.52, and 112.53, regarding temporary training permits, from the current rulemaking. This action will allow the work group to finish its study and work on its recommended proposed rules, to consider the new THAA suggested language, and to determine the appropriate rule section(s) to address the issuance of subsequent temporary training permits. For a future rulemaking, the Department will prepare a temporary training permit rule package that includes the work group's recommendations along with the HB 4007 changes and the cleanup changes that were part of the current rule proposal.

Advisory Board Recommendations AND COMMISSION ACTION

The proposed rules were presented to and discussed by the Hearing Instrument Fitters and Dispensers Advisory Board (Advisory Board) at its meeting on January 10, 2018.

The Advisory Board discussion primarily focused on Occupations Code §402.251(b), as amended by HB 4007, and proposed rule 16 TAC §112.50, Temporary Training Permit--Application and Eligibility Requirements. HB 4007 amended Occupations Code §402.251(b) by removing the provision that a temporary training permit holder had to wait 365 days after the permit expired before the person could obtain a new permit. As amended by HB 4007, the statute now provides that the commission by rule may provide for the issuance of a new temporary training permit after a person's temporary training permit expires.

The Department did not propose any new rules to implement Occupations Code §402.251(b) or propose any new restrictions or conditions on the issuance of a second temporary training permit. The current rules would allow a person to apply for a new temporary training permit when the previous permit expired (after the one-year extension period).

As part of the discussion, the Department had provided the Advisory Board with copies of the position paper submitted by the Texas Hearing Aid Association on this statutory change and association's recommendation for proposed rules. The Advisory Board also discussed the issues regarding why a temporary training permit holder may need to apply for a second temporary training permit after the initial permit expired.

The Advisory Board did not make any changes to the draft proposed rules at the January 10, 2018, meeting. The Advisory Board recommended that the draft proposed rules be published in the *Texas Register* as proposed rules for public comment. The Advisory Board also recommended that a workgroup study 16 TAC §112.50 related to Occupations Code §402.251(b) and the issues discussed above. The workgroup study may result in a possible rulemaking in the future.

The Advisory Board met on March 21, 2018, to review the public comments received on the proposed rules and to make a recommendation to the Commission regarding the proposed rules. The Advisory Board recommended that the Commission adopt the proposed rules as published with the exception of §§112.50, 112.52, and 112.53, which were recommended to be withdrawn. These three rule sections relate to the temporary training permit requirements.

At its meeting held on March 27, 2018, the Commission adopted the proposed rules as published, with the exception of §§112.50, 112.52, and 112.53, which were withdrawn.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §112.2

STATUTORY AUTHORITY

The amendments are adopted under Texas Occupations Code, Chapters 51 and 402, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 402. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. HEARING INSTRUMENT FITTERS AND DISPENSERS ADVISORY BOARD

16 TAC §112.10

The amendments are adopted under Texas Occupations Code, Chapters 51 and 402, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to imple-

ment these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 402. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER C. EXAMINATIONS

16 TAC §§112.21 - 112.24, 112.26

The amendments are adopted under Texas Occupations Code, Chapters 51 and 402, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 402. No other statutes, articles, or codes are affected by the adoption.

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Executive Director
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-8179

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SUBCHAPTER D. HEARING INSTRUMENT FITTER AND DISPENSER LICENSE

16 TAC §§112.30, 112.32, 112.33

The amendments are adopted under Texas Occupations Code, Chapters 51 and 402, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 402. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. APPRENTICE PERMIT

16 TAC §112.40, §112.42

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SUBCHAPTER H. CONTINUING EDUCATION REQUIREMENTS

16 TAC §112.70

The amendments are adopted under Texas Occupations Code, Chapters 51 and 402, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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SUBCHAPTER I. RESPONSIBILITIES OF THE COMMISSION AND THE DEPARTMENT

16 TAC §112.80

The amendments are adopted under Texas Occupations Code, Chapters 51 and 402, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 402. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER J. RESPONSIBILITIES OF THE LICENSEE

16 TAC §112.92, §112.95

The amendments are adopted under Texas Occupations Code, Chapters 51 and 402, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 402. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER L. FEES

16 TAC §112.110

The amendments are adopted under Texas Occupations Code, Chapters 51 and 402, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 402. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER M. COMPLAINTS

16 TAC §112.120

The amendments are adopted under Texas Occupations Code, Chapters 51 and 402, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 402. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER N. ENFORCEMENT PROVISIONS

16 TAC §112.130

The amendments are adopted under Texas Occupations Code, Chapters 51 and 402, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 402. No other statutes, articles, or codes are affected by the adoption.

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16 TAC §112.133

The repeal is adopted under Texas Occupations Code, Chapters 51 and 402, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 402. No other statutes, articles, or codes are affected by the adoption.

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CHAPTER 121. BEHAVIOR ANALYST

16 TAC §§121.1, 121.10, 121.20 - 121.27, 121.30, 121.50, 121.65 - 121.70, 121.75, 121.80, 121.90, 121.95

The Texas Commission of Licensing and Regulation (Commission) adopts new rules at 16 Texas Administrative Code (TAC), Chapter 121, §§121.1, 121.10, 121.20, 121.21, 121.23 - 121.27, 121.30, 121.50, 121.65 - 121.69, 121.75, and 121.90, regarding the Behavior Analyst program, without changes to the proposed text as published in the February 2, 2018, issue of the *Texas Register* (43 TexReg 501). The rules will not be republished.

The Commission also adopts new rules at 16 TAC, Chapter 121, §§121.22, 121.70, 121.80, and 121.95, regarding the Behavior Analyst program, with changes to the proposed text as published in the February 2, 2018, issue of the *Texas Register* (43 TexReg 501). The rules will be republished.

Senate Bill 589, 85th Legislature, Regular Session (2017), established Texas Occupations Code, Chapter 506, which requires the Commission and the Texas Department of Licensing and Regulation (Department) to license and regulate behavior analysts and assistant behavior analysts. The adopted new rules provide for the Department to perform the various functions, including licensing, compliance, and enforcement, necessary to regulate this program. The adopted new rules are necessary to implement Senate Bill 589.

The adopted new §121.1 provides the citation to the statutory authority.

The adopted new §121.10 creates the definitions to be used in the behavior analyst program.

The adopted new §121.20 provides the requirements for a complete application in the behavior analyst program.

The adopted new §121.21 establishes the licensing requirements for the behavior analyst.

The adopted new §121.22 establishes the licensing requirements for the assistant behavior analyst.

The adopted new §121.23 provides for the examination required for licensure.

The adopted new §121.24 provides the educational requirements for licensure.

The adopted new §121.25 establishes continuing education requirements to maintain licensure.

The adopted new §121.26 details the renewal process and requirements.

The adopted new §121.27 explains the conditions for inactive status for a license.

The adopted new §121.30 provides conditions regarding exemptions for persons not required to comply with this chapter.

The adopted new §121.50 details the reporting requirements for license holders.

The adopted new §121.65 details the composition of the behavior analyst advisory board and the qualifications for membership.

The adopted new §121.66 provides the advisory board duties.

The adopted new §121.67 explains the advisory board member term of service and vacancy information.

The adopted new §121.68 establishes the appointment and duties of the advisory board presiding officer.

The adopted new §121.69 provides the conditions for meetings of the advisory board.

The adopted new §121.70 details responsibilities of license holders.

The adopted new §121.75 creates the code of ethics to which license holders must adhere.

The adopted new §121.80 creates the fees payable in the behavior analyst program.

The adopted new §121.90 explains the basis and guidelines for taking disciplinary action.

The adopted new §121.95 details how license holders must provide complaint information and explains the handling of complaints.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the February 2, 2018, issue of the *Texas Register* (43 TexReg 501). The deadline for public comment was March 5, 2018. The Department received comments during the 30-day public comment period from nineteen interested individuals; from the entity Behavior Frontiers; and from three organizations: the Texas Association for Behavior Analysis - Public Policy Group and Texas Association for Behavior Analysis (jointly commenting, and referred to jointly in this section as TXABA); and the Texas Speech-Language Hearing Association (TSHA). Several comments reference a certifying entity, the Behavior Analyst Certification Board, which will be referred to as BACB. The public comments are summarized below.

Comment--Thirteen individuals and TXABA commented regarding the licensing fee, including comments that the fee for the initial license is too high; the renewal fee is too high; the fees are higher than those for similar occupations and higher than the fees in some other states; the amount of the fees is not justified by the anticipated costs of operating the regulatory program; other costs imposed on license holders for certification and continuing education are high; the fee amounts would be a hardship because many license holders work in low-paying settings; and the benefits to the license holders resulting from the licensing fees are not identified or justified. Questions were received regarding the license term covered by the fee, whether the fees might decline over time and with a larger number of license holders, and whether the criminal background check cost is included in the licensing fee.

Department Response--The Department analyzed the anticipated costs and revenues associated with the behavior analyst licensing program as part of the legislative effort adopting the enabling statute. At the time of the analysis, 1,109 behavior analysts, 81 behavior analysts-doctoral, and 90 assistant behavior analysts in Texas were certified by the certifying entity BACB.

Two significant changes have occurred since the time of the initial fiscal analysis. First, the number of certified individuals in Texas has since increased to 1,272 behavior analysts, 86 behavior analysts-doctoral, and 101 assistant behavior analysts who may apply for Texas licensure through the Department. Second, the Department has made significant internal changes to its organizational structure, resulting in the need to reevaluate the earlier agency cost figures and the need for full-time employee equivalent positions (FTEs) to support the behavior analysis program. In addition, as part of the recalculation, some of the figures that were used for the original cost predictions are no longer accurate.

In its updated fiscal analysis, the Department estimates that 1.5 FTEs would be needed to regulate this new license holder population, a reduction from the 3.5 FTEs originally predicted to be needed. The Department estimates the employees would be required to start in the last quarter of fiscal year 2018 to be ready to begin licensing September 1, 2018. For the last quarter of fiscal year 2018, these employees would cost approximately $25,103 in salary and payroll costs, $9,193 in employee benefits, and $720 in other operating expenses. According to Legislative Budget Board analysis, start-up costs for furniture and equipment would be $16,148 in 2018. Beginning in fiscal year 2019, the Department estimates the salary cost each full fiscal year would be $83,676 and associated employee benefits would be $30,642 per fiscal year. Costs for operating expenses for each year would be $2,400. The Department estimates that name-based criminal background check costs would be $1,280 in fiscal year 2018 and $1,280 every two years afterward, when license holders renew. The criminal background check costs were included and calculated in the licensing fee, and will not be a separate cost to applicants. Based on these predictions, the program costs are expected to be $52,443 the first fiscal year the rules are in effect, $116,718 in both the second and fourth years, and $117,998 in the third and fifth years the rules are in effect.

There is an estimated gain in revenue in three of the first five years the rules are in effect and no revenue gain or loss in the other two years, corresponding with the initial licensing in the first year and renewals following every two years after the first license. The amount of revenue from licensing fees is estimated to be $235,180 in each of those three years. The licenses will be issued for two-year terms. All potential license holders must hold licenses by September 1, 2018, so it is assumed that they will be licensed by that date, thus obtaining their licenses in the first year the rule is in effect. In the years that the license holders do not renew, there will be no revenue, other than new license holders obtaining their initial licenses. The number of new license holders that will enter the profession each year is unknown.

The Department is required to ensure that the revenue from each of its programs covers the costs of operating the programs. Recalculating the costs for recoupment through the licensing fees resulted in a revised fee of $165 for behavior analysts for both the initial and renewal fee for a two-year license, and $110 for assistant behavior analysts for the initial and renewal fee for a two-year license.

The fees were established based on the fiscal analysis and are designed to spread the cost across the licensed population. Because the costs associated with the initial licenses and renewal licenses are similar, the initial and renewal fees were most appropriately made equal. Some commenters noted that other costs and fees associated with practicing the behavior analysis profession are high, but those costs are not part of the fiscal analysis of the implementation of the program in Texas. The Department annually analyzes fees and the agency costs associated with operating each of its programs, and adjustment of the fees follows as necessary. The costs of the behavior analyst licensing program are spread across a relatively small population of license holders, but due to the requirement to balance revenues and costs the Department set the fees as it was required to do.

During the legislative process to initiate the behavior analysis licensing program the costs and benefits to potential license holders, patients and clients, the public, and stakeholders were considered and weighed. The Texas legislature created the legislation to reflect its decisions about those considerations, and these rules implement the regulatory licensing program that resulted. The Department's calculations relating to the costs and revenues, and ultimately, the fee amounts, are reflective only of the financial aspects of regulation that can be estimated. Those calculations cannot capture unquantifiable benefits to each type of stakeholder from the implementation of the regula-

tory program, and the benefits of regulation do not necessarily fall equally on all categories of stakeholders.

The fee amounts provided in §121.80 have been amended in accordance with the updated fiscal analysis.

Comment--Two individuals and TXABA commented that the need to hire 3.5 full-time staff for the operation of the behavior analysis program is not justified by the amount of work that will be required to operate the program and this figure should be revised.

Department Response--The number of staff needed to operate the new program was determined from the information the Department has about the program and from the Department's experience in bringing on new and existing programs and successfully implementing them. Based on what is known of the program and the estimated population size of license holders, the Department initially believed that 3.5 FTEs was the appropriate number of employees to be assigned to the regulation of this program, which includes licensing, compliance and enforcement, customer service, and other functions. The Department reevaluated its predictions and calculations in light of the increasing number of potential licensees and new estimates that lower the anticipated costs associated with the regulation of behavior analysts. The expected number of FTEs now predicted for the program is 1.5. With additional knowledge and experience gained as the program begins operation and needs are reassessed, the number of FTEs may be adjusted and likewise, potentially, the fees. As a consequence of this and related comments the Department's recalculation of the fiscal impacts resulted in a reduction in the licensing fee, and the fees provided in §121.80 have been changed accordingly.

Comment--Two individuals commented about exemptions from licensing, noting that there are Frequently Asked Questions about exemptions on the web site but an absence of rule provisions about exemptions, and questioning the lack of an exemption from licensing for employees of the state. One of the commenters asked whether licensing would be a condition of state employment.

Department Response--Texas Occupations Code, Chapter 506 (the Act), Subchapter B, provides that the Act does not apply to the activities and occupations listed in that subchapter. The list has not been repeated in the rules. The legislature did not specifically include state employees among those to whom the Act does not apply, and the Department is not authorized to create exemptions from licensing or to make the Act inapplicable to additional occupations or activities. Employers may require employees to become licensed as a condition of employment, and the Act requires people to become licensed if the requirement to have a license applies to them. Persons not required to become licensed may choose to obtain a Texas license if qualified. The Department did not make any changes to the rules in response to this comment.

Comment--One commenter recommends a grandfathering period for one year to address the shortage of individuals practicing behavior analysis.

Department Response--The Act requires persons practicing behavior analysis or using the title of "licensed behavior analyst" or "licensed assistant behavior analyst" to become licensed beginning September 1, 2018. No person is authorized to identify themselves as a license holder or perform activities requiring a license after that date unless the person has obtained a Texas license. The Department is not authorized to waive or delay imposing licensing requirements or to license persons who do not meet the criteria in the Act. The Department did not make any changes to the rules in response to this comment.

Comment--Two commenters questioned the requirement for examination, the purpose of the examination, and the rule provision allowing the Department to impose additional examination requirements.

Department Response--The Act requires applicants for a license to pass the examination offered by the certifying entity. The rules provide that the examination conducted by the Behavior Analyst Certification Board is the designated examination. No other certifying entities have been approved and therefore no other examination is yet approved. Examinations in addition to the one required by the certifying entity are not required or anticipated at this time, but the Department has reserved the ability to require or accept an alternative examination, or to impose additional examination requirements, if necessary. The Department did not make any changes to the rules in response to this comment.

Comment--One commenter recommends that the Department require license holders to report and track the persons working under the supervision of license holders. This commenter asked if supervision agreement templates provided by the Behavior Analyst Certification Board should be used, and whether the Department will post templates.

Department Response--The Act imposes no supervision-related requirements on the Department, and requires only that licensed assistant behavior analysts be under the supervision of a licensed behavior analyst. The Department has chosen not to conduct tracking or monitoring, or to otherwise administer requirements related to supervision or employment agreements or relationships except to investigate irregularities that could affect a license holder's certification or license. The Department does not seek to burden license holders with duplication of administrative requirements imposed by the certifying entity. License holders must of course comply with those requirements to maintain certification, including any reporting obligations and the use of the certifying entity's forms and templates if required by the certifying entity. The Department did not make any changes to the rules in response to this comment.

Comment--One individual commented that the rules do not require education and that behavior analysts are not educated about, or qualified to provide, speech therapy, resulting in the inability to recognize the need for speech therapy and leading to the provision of inadequate or inappropriate therapy. The commenter recommends raising the education, supervision, experience, and continuing education standards for behavior analysts and assistant behavior analysts to parallel those for speech-language pathologists and assistant speech-language pathologists. The commenter further recommends that the provision of speech therapy be left to speech-language pathologists and assistants.

Department Response--The Act requires license applicants to have met the educational requirements of the certifying entity and does not impose additional educational requirements. Behavior analysis license holders may be required to become licensed in other occupations if their activities subject them to the licensing requirements of those occupations. The Act does not specifically define the complete scope of activities that a behavior analysis license holder might perform, but does exclude psychological testing, psychotherapy, cognitive therapy, psychoanalysis, hypnotherapy, and counseling as treatment modalities, and prohibits the diagnosis of disorders. The Department

is not averse to exploring the need for development of regulation regarding the respective scope of practice applicable to the speech-language and behavior analysis professions, each of which it licenses and regulates. Because the scope of practice in these professions may touch or overlap, there is a need for caution before attempting to define and regulate the boundaries of the respective practices. That effort is outside of the scope of this rulemaking. At this time, the Department is not expanding or reducing any boundaries placed on the scope of practice by the certifying entity. As the Department gains knowledge and expertise regulating these programs, and considering that both are evolving, the Department will evaluate and reassess on an ongoing basis. Both of these regulated populations are encouraged to participate in efforts to identify and define scope of practice. The Department did not make any changes to the rules in response to this comment.

Comment--One individual and TSHA commented regarding scope of practice: persons practicing behavior analysis do not have adequate education and training to provide many therapies and services they are providing; and their scope of practice should be better defined and limited to exclude areas of therapy more properly provided by speech-language therapists, occupational therapists, physical therapists, and teachers of math and reading.

Department Response--The Department agrees that the scope of practice should be evaluated and further rulemaking may be appropriate. However; defining the scope of practice of the behavior analyst and assistant behavior analyst is outside of the scope of this rulemaking. The proposed behavior analysis rules were necessary to implement the legislation that created the regulatory program within the required time period, and further refinement of the rules will occur over time. The Department did not make any changes to the rules in response to this comment.

Comment--One individual opposes the rule and comments that the profession of behavior analysis is coercive/coerces parents into using behavior analysis services through fear of adverse consequences if it is not used; that it encroaches upon other professionals helping those with autism; that the certifying entity advances determinism, and requires certificants to administer painful aversion therapy; and that the Association for Behavior Analysis International approved one of these techniques, electric skin shock, as being aligned with its mission.

Department Response--The Act requires the Department to administer a licensing program for behavior analysis professionals. The rules implement the program and regulate individual Texas license holders. The Department has no authority over certifying entities or professional associations or organizations. The rules contain many provisions to prevent inappropriate, unprofessional, and deceptive practice by license holders. As the Department gains experience and expertise in regulating this program the need for expanded regulation to address abuses or misbehavior that is not adequately covered by the rules will be reassessed on an ongoing basis. All persons are encouraged to make a complaint to the Department about conduct or treatment that they believe violates the standards and requirements in the Act and rules. The Department did not make any changes to the rules in response to this comment.

The organization TXABA provided several comments which are summarized with the Department's responses below:

Comment 1--The fiscal impact statement states that the Department needed to hire 3.5 additional full-time employees but the governmental growth impact statement states that the creation of new employee positions is not required.

Department Response--The fiscal impact statement indicates the number of full-time employee equivalents the Department expects will be needed to fulfill the statutory requirement to create and operate the licensing program. The governmental growth impact statement focuses on requirements imposed only by the rules or by implementation of the rules. The rules do not impose or create requirements for staffing the program. The Department did not make any changes to the rules in response to this comment.

Comment 2--The proposed rule indicates that approximately 1,280 persons will be required to be licensed in Texas, but the certifying entity, the Behavior Analyst Certification Board, shows 1,458 certified persons in Texas, and therefore the rule should be updated.

Department Response--The Department's fiscal analysis for the behavior analysis program was performed when the enabling legislation was being created, and that analysis was also used for developing the rules for the new program. The Department agrees that the analysis should be updated and has revised the fiscal analysis to reflect the increase in the number of certified persons in Texas, currently at 1,459. The revision of the fiscal analysis has resulted in lower licensing fees, so §121.80, Fees, has been amended accordingly. The Department did not make any changes to the rules in response to this comment.

Comment 3--In §121.22(a)(3) the term "behavior therapy" should be changed to "applied behavior analysis" in the requirement "To qualify for licensure as an assistant behavior analyst, a person must . . . be in compliance with the applicable supervision requirements of the certifying body at all times when practicing behavior therapy."

Department Response--The Department agrees that the rules should be internally consistent and has changed the term to "behavior analysis" in §121.22(a)(3).

Comment 4--The wording of §121.70(b)(9) should be changed from "A license holder practicing in an educational setting, including a school, learning center, or clinic, shall comply with the recordkeeping requirements of the educational setting or with the retention requirements of the certifying entity, if more stringent" to "A license holder practicing in an educational setting, school, learning center, or clinic shall comply with the recordkeeping requirements of the service setting or with the retention requirements of the certifying entity, if the latter are more stringent."

Department Response--Because the license holder is required to comply with applicable recordkeeping and retention requirements imposed by the certifying entity or imposed by the service setting, the Department believes the suggested change creates no additional obligations on license holders and is within the scope of this rulemaking. The recommended change to §121.70(b)(9) has been made.

Comment 5--To be consistent with §121.95(b)(1) and (c), the wording of §121.70(b)(12) should be changed from "A license holder shall display the license in the primary location of practice, but shall not display a license that has been photographically or otherwise reproduced" to "A license holder shall display the license in the primary location of practice, if any, but shall not display a license that has been photographically or otherwise reproduced."

Department Response--The Department agrees that the recommended change would increase the internal consistency of the rules and has added "if any" to §121.70(b)(12).

Comment 6--The wording of §121.75(b)(6) should be changed from "All license holders shall . . . be knowledgeable of all available information relevant to the behavior analysis services being provided to the client" to "All license holders shall . . . be knowledgeable of all available historical and current information relevant to the behavior analysis services being provided to the client."

Department Response--The Department disagrees and believes that the proposed rule is clear and appropriate in scope. The recommended change would not improve the rule. The Department did not make any changes to the rules in response to this comment.

The organization TSHA provided several comments which are summarized with the Department's responses below:

Comment 1--The Department should not rely on the BACB Code of Ethics to regulate license holders: §121.70(d) requires license holders to comply with the requirements of the certifying entity, not the Department, if the requirements of the certifying entity and the Department conflict and the license holder cannot reasonably comply with both requirements.

Department Response--The Act imposes the requirement that all applicants for licensure must be certified by a certifying entity. It also requires the Department to create rules to regulate license holders and requires license holders to comply with the Act and rules. Part of complying with the Act is maintaining certification by the certifying entity. The certifying entity obligates license holders to comply with its requirements, and the Department requires compliance with both the Act and the rules, and, by virtue of requiring certification, with the requirements of the certifying entity, so that the license holder can maintain the necessary certification. Should the license holder be subject to conflicting requirements, a decision to comply with the state requirement at the cost of violating the certifying entity's requirement could jeopardize the certification and result in the loss of the both the certification and the Department license. The provision waiving compliance with a state requirement is provided only for this limited purpose of protecting the certification and does not shift the regulatory burden to the certifying entity. The Department did not make any changes to the rules in response to this comment.

Comment 2--A licensing requirement should be imposed on Board Certified Assistant Behavior Analysts (BCaBAs), Registered Behavior Technicians (RBTs), and Applied Behavior Analysis Line Therapists. The comment compares and contrasts the qualifications and duties relevant to these occupations and describes perils associated with the lack of a license requirement, including no mandatory background check.

Department Response--The Act created only two licenses: behavior analyst and assistant behavior analyst. The Act does not authorize the Department to create additional licenses. Section 121.70(b)(11) imposes responsibility on license holders for the actions of unlicensed persons employed or contracted by them, and prohibits delegation of services, functions, or responsibilities requiring professional competence to a person not competent or not properly credentialed. The Department performs a criminal background check for every new and renewal license application and denies or does not renew licenses if applicants fail. The Department did not make any changes to the rules in response to this comment.

Comment 3--The BCBA Professional and Ethical Compliance Code for Behavioral Analysts does not put consumer safety and well-being first but demands promotion of their field above all else. The Code does not prohibit all use of harmful reinforcers.

Department Response--The Act requires license holders to maintain certification by their certifying entity in order to hold a Texas behavior analysis license, so license holders must comply with the requirements of the certifying entity. The Department has no role in the creation and imposition of requirements by certifying entities upon those certified by them. The Department did not make any changes to the rules in response to this comment.

Comment 4--Registered Behavior Technicians (RBTs) perform the bulk of direct behavior analysis services, but the BACB Code of Ethics places no limit on the number of RBTs who may be supervised by a license holder. The commenter advocates placing such limits.

Department Response--Imposing substantial limitations on the supervision relationship that exceed those of the certifying entity is not required by the Act and is outside of the scope of this rulemaking. The Department may examine developing limitations or requirements regarding the supervision relationship that may exceed those of the certifying entity as the program begins operation and needs can be assessed. The Department did not make any changes to the rules in response to this comment.

Comment 5--The BACB code of ethics requirement for professional cooperation and the requirement for professional collaboration in the American Speech-Language-Hearing Association (ASHA) ethics code are compared and contrasted. The commenter states that the difference in emphasis puts the profession of Speech-Language Pathology at high risk for encroachment and inappropriate representation of behavior analysts' services, and recommends amending the rule to rectify the deficiencies and keep the public safe.

Department Response--The Texas Legislature in 2015 passed legislation moving the Speech-Language Pathologists and Audiologists program to the Department from the Department of State Health Services. In 2017, the legislature created the new licensing program for behavior analysis, for which the initial rules are being adopted here. The Department recognizes the role of the BACB and ASHA in developing standards and guidance for these occupations. The Department is not averse to exploring the need for development of regulation regarding the respective scope of practice applicable to each profession. Because the scope of practice in these professions may touch or overlap, there is a need for caution before attempting to define and regulate the boundaries of practice. That effort is outside of the scope of this rulemaking. At this time, the Department is not enlarging or reducing any boundaries placed on the scope of practice by the certifying entity. As the Department gains knowledge and expertise regulating these programs, and considering that both are evolving, the Department will evaluate and reassess on an ongoing basis. Both of these regulated populations are encouraged to participate in efforts to identify and define scope of practice. The Department did not make any changes to the rules in response to this comment.

The entity Behavior Frontiers provided several comments which are summarized with the Department's responses below:

Comment 1--The commenter states that the Qualified Applied Behavior Analysis Credentialing Board (QABA) and the Behavioral Intervention Certification Council (BICC) are certifying enti-

ties for persons practicing applied behavior analysis. The commenter recommends text changes to list and include these entities by name in the rules in addition to the BACB, as certifying entities, because their absence has the potential to exclude providers certified by these entities from licensure and result in reduced access to care for families in need of services.

Department Response--The Act defines the certifying entity to mean "the nationally accredited Behavior Analyst Certification Board or another entity that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute to issue credentials in the professional practice of applied behavior analysis and approved by the Department." To date, no certifying entities other than the BACB have met this standard or have obtained approval by the Department. As individuals apply for licensing, other certifying entities will be evaluated for approval by the Department as necessary. Approved certifying entities need not be listed in the rules to be recognized as approved certifying entities, and no entity is excluded by the rules from consideration for approval. The Department did not make any changes to the rules in response to this comment.

Comment 2--The commenter recommends expanding the provision in §121.20(c), stating "The Department may require an applicant to submit additional information or documentation of an applicant's qualifications . . . to provide supervision in behavior analysis to unlicensed persons or to behavior analysis license holders" to specifically include verification of meeting the 2015 BACB standards, the QABA's coursework, the BICC coursework or standards, other approved certifying entity's coursework or standards, or verification of having met defined standards to provide supervision, for those providing supervision before January 1, 2015 when the BACB instituted defined supervision standards. The defined standards would include unencumbered BACB certification; unencumbered psychologist licensure, or other unencumbered licensure at the time supervision was being provided. The commenter also recommends amending the rule to exempt persons who received their certification before January 2015 from the requirement to provide documentation of supervision relationships, because no documentation was required before January 2015 and therefore it could not be provided.

Department Response--The Act imposes no supervision-related requirements on the Department, and requires only that licensed assistant behavior analysts be under the supervision of a licensed behavior analyst. Applicants who are certified by the BACB and who are in compliance with its supervision-related requirements will not be asked to provide information or documentation about supervision qualifications unless the Department requests it for enforcement or other purposes. Likewise, if other entities become Department-approved certifying entities, applicants who are in compliance with the certifying entity's requirements for supervision will not be asked to provide additional information or documentation unless necessary. The Department has chosen not to conduct tracking or monitoring, or to otherwise administer requirements related to supervision or employment agreements or relationships except to investigate irregularities that could affect a license holder's certification or license. The Department does not seek to burden license holders with duplication of administrative requirements imposed by the certifying entity and will request documents only when a specific need arises. The Department sees no need to insert in the rule a list of alternative supervision documents that might be requested. The Department did not make any changes to the rules in response to this comment.

Comment 3--The commenter recommends listing by name the Qualified Autism Service Provider credential and the BICC certification in addition to the BACB certification in the required qualifications for licensure as an assistant behavior analyst.

Department Response--The Act defines the certifying entity to mean "the nationally accredited Behavior Analyst Certification Board or another entity that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute to issue credentials in the professional practice of applied behavior analysis and approved by the Department." To date, no certifying entities other than the BACB have met this standard or have obtained approval by the Department. As individuals apply for licensing, other certifying entities will be evaluated for approval by the Department as necessary. Approved certifying entities need not be listed in the rules to be recognized as approved certifying entities. The Department did not make any changes to the rules in response to this comment.

Comment 4--The commenter compares the availability and cost of the BACB assistant behavior analyst examination unfavorably to the Qualified Applied Behavior Analysis Credentialing Board QASP examination, and recommends listing both examinations as the examinations designated and approved for the assistant behavior analyst license. The designation of only the BACB examination unfairly favors the BACB and negatively impacts qualified potential providers and supervisors.

Department Response--The Act requires applicants for a license to pass the examination offered by the certifying entity. The rules provide that the examination conducted by the Behavior Analyst Certification Board is the designated examination. No other certifying entities have been approved by the Department and therefore no other examination is yet approved. The Department did not make any changes to the rules in response to this comment.

In addition to changes made in response to the comments on the proposed rule, the Department has edited the rule text in §121.22 (consistent terminology) and §121.95 (the license card need not be displayed in the location of practice; it is carried on the person).

The Behavior Analyst Advisory Board (Board) met on March 16, 2018, and recommended the proposed rules be adopted with changes. At its meeting held on March 27, 2018, the Commission adopted the proposed rules with changes as recommended by the Board and the Department.

The new rules are adopted under Texas Occupations Code, Chapters 51 and 506, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 506. No other statutes, articles, or codes are affected by the adoption.

§121.22. Assistant Behavior Analyst Licensing Requirements.

(a) To qualify for licensure as an assistant behavior analyst, a person must:

(1) hold current certification as a Board Certified Assistant Behavior Analyst or equivalent, issued by the Behavior Analyst Certification Board or its equivalent as approved by the department;

(2) be in compliance with all professional, ethical, and disciplinary standards established by the certifying entity; and

(3) be in compliance with the applicable supervision requirements of the certifying entity at all times when practicing behavior analysis.

(b) Persons who are subject to or have received a disciplinary action by the certifying entity may be ineligible for a license.

(c) Persons who hold current certification by the certifying entity but who do not hold a current license may not:

(1) practice behavior analysis; or

(2) use the title "licensed assistant behavior analyst."

§121.70. Responsibilities of License Holders.

(a) Licenses issued by the department remain the property of the department and shall be surrendered to the department on demand.

(b) A license holder shall:

(1) inform the department of any violations of this chapter or the Act.

(2) promptly provide upon request any documents or information satisfactory to the department to demonstrate the license holder's qualifications for certification by the certifying entity or for licensure by the department.

(3) report to the department any fact that may affect the license holder's qualifications to hold a certification or license in accordance with §121.50.

(4) notify each client or the minor client's parent or authorized representative of the department's name, website, email address, mailing address, and telephone number for the purpose of directing complaints to the department.

(5) truthfully respond in a manner that fully discloses all information in an honest, materially responsive and timely manner to a complaint filed with or by the department.

(6) not interfere with a department investigation or disciplinary proceeding in any way, including by misrepresentation or omission of facts to the department or using threats or harassment against any person.

(7) comply with any order issued by the commission or the executive director that relates to the license holder.

(8) provide a client or a minor client's parent or authorized representative with a written agreement for services prior to the commencement of behavior analysis services.

(A) The agreement shall contain, at a minimum, a description of the services to be provided, goals, techniques, materials, the cost for services, payment arrangements and policies, hours, cancellation and refund policies, contact information for both parties, and the dated signatures of both parties.

(B) Any subsequent modifications to the agreement shall be signed and dated by both parties.

(9) maintain legible and accurate records of behavior analysis services rendered. A license holder practicing in an educational setting, school, learning center, or clinic shall comply with the record-keeping requirements of the service setting or with the retention requirements of the certifying entity, if the latter are more stringent.

(10) maintain records for a minimum of the longer of:

(A) seven years following the termination of behavior analysis services;

(B) seven years following the date on which a minor client reaches the age of 22; or

(C) the retention period required by the certifying entity.

(11) not delegate any services, functions, or responsibilities requiring professional competence to a person not competent or not properly credentialed. A license holder in private practice is responsible for the services provided by unlicensed persons employed or contracted by the license holder.

(12) display the license in the primary location of practice, if any, but shall not display a license that has been photographically or otherwise reproduced.

(c) If any requirement of a license holder's certifying entity differs in stringency from a requirement of the Act or the commission rules, the more stringent provision shall apply.

(d) If any requirement of a license holder's certifying entity conflicts with a requirement of the commission rules such that the license holder cannot reasonably comply with both requirements, the license holder shall comply with the requirement of the certifying entity.

§121.80. Fees.

(a) All fees paid to the department are nonrefundable.

(b) Licensing fees are as follows:

(1) application and initial license, behavior analyst--$165

(2) application and initial license, assistant behavior analyst--$110

(3) renewal, behavior analyst--$165

(4) renewal, assistant behavior analyst--$110

(5) change, active status to inactive status--$0

(6) change, inactive status to active status--$25

(7) renewal of license on inactive status--renewal fees as stated in paragraphs (3) and (4)

(8) license duplicate or replacement--$25

(c) Late renewal fees for licenses issued under this chapter are prescribed under §60.83 of this title (relating to Late Renewal Fees).

(d) The fee for a dishonored/returned check or payment is the fee prescribed under §60.82 of this title (relating to Dishonored Payment Device).

(e) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).

§121.95. Complaints.

(a) The department shall list, with its business telephone number, a toll-free telephone number established to accept complaints relating to a health profession regulated by the department.

(b) A license holder shall notify each client of the name, mailing address, email address, telephone number, and website of the department for the purpose of directing complaints to the department. A license holder shall display this notification:

(1) on a sign prominently displayed in the primary location of practice of each license holder, if any; and

(2) on written documents including a written contract, a bill for service, or information brochure provided by the license holder to a client or third party.

(c) A license holder shall display the license certificate as issued by the department in the primary location of practice, if any.

(d) A license holder shall not make any alteration on official documents issued by the department.

(e) All information and materials subpoenaed or compiled by the department in connection with a complaint and investigation under this chapter are confidential in accordance with §506.202 of the Act.

(f) The department may disclose a complaint or investigation and all information and materials compiled by the department in connection with the complaint or investigation to a person's certifying entity in accordance with §506.202 of the Act.

(g) For purposes of this chapter, a health profession is a profession for which the enabling statute is located in Title 3, Occupations Code, or that is determined to be a health profession under other law.

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 April 11, 2018.

TRD-201801549
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Effective date: May 1, 2018
Proposal publication date: February 2, 2018
For further information, please call: (512) 463-8179

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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 403. GENERAL ADMINISTRATION

16 TAC §403.800

The Texas Lottery Commission (Commission) adopts new 16 TAC §403.800 (Savings Incentive Program), without changes to the proposed text as published in the February 23, 2018, issue of the *Texas Register* (43 TexReg 988). The purpose of the adoption is to implement language required by newly-enacted SB 132 from the Regular Session of the 85th Texas Legislature concerning savings incentive programs for state agencies. While currently the Commission has no undedicated general revenue appropriated to it that would allow for a savings incentive program, the statute requires that the Commission enact rules in case such funds are appropriated in the future.

The Commission received no written comments on the proposal during the public comment period.

This adoption is intended to implement Texas Government Code, Chapter 466.

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 April 13, 2018.

TRD-201801605
Bob Biard
General Counsel
Texas Lottery Commission
Effective date: May 3, 2018
Proposal publication date: February 23, 2018
For further information, please call: (512) 344-5012

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING HIGH SCHOOL GRADUATION

19 TAC §74.1027

The Texas Education Agency adopts new §74.1027, concerning diplomas for certain students who entered Grade 9 before the 2011-2012 school year. The new section is adopted with changes to the proposed text as published in the February 23, 2018, issue of the *Texas Register* (43 TexReg 995). The new section reflects requirements implemented by Senate Bill (SB) 463, 85th Texas Legislature, Regular Session, 2017, by allowing certain individuals to graduate and receive a high school diploma under alternative requirements.

REASONED JUSTIFICATION. Prior to 2017, the Texas Education Code (TEC) prohibited a student who entered ninth grade before the 2011-2012 school year from receiving a high school diploma unless the student performed satisfactorily on each subject of the exit-level Texas Assessment of Knowledge and Skills (TAKS). Students subject to this requirement were required to perform satisfactorily on the following exit-level subject-area tests: English language arts, mathematics, science, and social studies. Prior to 2002, students were required to meet performance standards on older exit-level assessments: the Texas Assessment of Academic Skills (TAAS) and the Texas Educational Assessment of Minimum Skills (TEAMS).

The 85th Texas Legislature, Regular Session, 2017, passed SB 463, adding TEC, §28.02541, which establishes provisions to allow certain former students who have completed the curriculum requirements for graduation but who have not performed satisfactorily on the required assessments to qualify for a high school diploma.

Adopted new §74.1027, Diplomas for Certain Individuals Who Entered Grade 9 Before 2011-2012 School Year, establishes which individuals may be eligible to graduate and receive a high school diploma under the TEC, §28.02541, by meeting certain alternative requirements.

The new rule establishes that the school district or open-enrollment charter school in which an individual is enrolled or was last enrolled is required to determine whether the individual may qualify to graduate and receive a high school diploma on the basis of the alternative requirements for graduation. Under the new rule, a school district may develop recommendations for local alternative requirements if the requirements would allow an individual to demonstrate proficiency in the content related to an

examination for which the individual has not performed satisfactorily.

The provisions of new §74.1027 expire September 1, 2019, in accordance with the authorizing statute.

In response to public comments, the following changes were made at adoption.

A change was made to §74.1027(a)(5) to clarify that an individual may satisfy alternative requirements in accordance with either §74.1027(c) or (d).

A reference to §74.1003, Industry-Based Certifications for Public School Accountability, was added to §74.1027(c)(3) to clarify which licensures and certifications are approved.

Section 74.1027(c)(5) was amended to clarify that successful completion of college-level coursework must result in earned college credit.

In §74.1027(d), the requirement that a district receive input from the district-level planning and decision-making committee when adopting local alternative requirements was removed. The term "additional" was changed to "local" to clarify that the local alternative requirements in §74.1027(d) are not requirements that would have to be met in addition to requirements in §74.1027(c).

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began February 23, 2018, and ended March 26, 2018. Following is a summary of the public comments received and corresponding agency responses.

Comment: One administrator inquired whether a combination of substitute assessments and the subject-area test would meet the criteria in proposed §74.1027(a)(4) that a student be administered the subject-area test at least three times.

Agency Response. The agency provides the following clarification. In accordance with TEC, §28.02541(a)(4), an individual who entered high school prior to the 2011-2012 school year is eligible to graduate under alternative graduation requirements if the individual has been administered at least three times the assessment instrument or portion of the assessment instrument required for graduation.

Comment: One administrator stated that it is unclear which industry-recognized licenses and certifications would be allowed under proposed §74.1027(c)(3).

Agency Response. The agency agrees that additional clarity is necessary. In response to this and other comments, §74.1027(c)(3) has been modified at adoption to add a reference to 19 TAC §74.1003, Industry-Based Certifications for Public School Accountability.

Comment: One administrator asked whether college-level coursework in proposed §74.1027(c)(5) means coursework in the subject area of the test in which the student has not performed satisfactorily or in any subject.

Agency Response. The agency provides the following clarification. Successful completion of any college-level coursework would satisfy the requirement.

Comment: One administrator stated that proposed §74.1027(d) is difficult to understand and requested that it be clarified.

Agency Response: The agency agrees that additional clarification is necessary. In response to this and other comments, §74.1027(d) has been modified at adoption to read, "With approval by the school district board of trustees, a school district may develop recommendations for local alternative requirements if the requirements would allow an individual to demonstrate proficiency in the content related to an examination for which the individual has not performed satisfactorily."

Comment: One administrator asked whether local requirements for graduation in proposed §74.1027(d) would be in addition to or instead of the options in proposed §74.1027(c).

Agency Response: The agency provides the following clarification. An individual may meet requirements in §74.1027(c) or (d) and is not required to meet both. In response to this and other comments, §74.1027(d) has been modified at adoption to read, "With approval by the school district board of trustees, a school district may develop recommendations for local alternative requirements if the requirements would allow an individual to demonstrate proficiency in the content related to an examination for which the individual has not performed satisfactorily."

Comment: One administrator stated that proposed §74.1027(a)(4) seems to contradict the current assessment rule in 19 TAC §101.4003. The commenter stated that §101.4003 permits a student who must meet TAKS assessment graduation requirements to substitute an alternate assessment to satisfy graduation requirements; however, proposed §74.1027 stipulates that a student must first take the required test three times before that student is eligible to use a substitute assessment.

Agency Response: The agency disagrees that the rules are contradictory. In accordance with TEC, §28.02541(a)(4), an individual who entered high school prior to the 2011-2012 school year is eligible to graduate under alternative graduation requirements if the individual has been administered the assessment instrument or part of the assessment instrument for which the individual has not performed satisfactorily at least three times. A student who did not meet this requirement would still be eligible to satisfy the alternate assessment requirements in §101.4003.

Comment: One administrator stated that it is unfair that students who take State of Texas Assessments of Academic Readiness (STAAR®) exams can graduate when they only pass three of five end-of-course exams, but TAKS students are not given the same opportunity. The commenter requested the proposed rule be comparable to the STAAR® individual graduation committee rule.

Agency Response: The agency disagrees that the proposed rule is unfair to students and has determined that in accordance with TEC, §28.02541, a student who entered ninth grade prior to the 2011-2012 school year and has met all curriculum requirements for graduation but who has not performed satisfactorily on an assessment instrument or part of an assessment instrument may be eligible to graduate if the student met the criteria established in the rule as adopted. The statute does not require a student who entered ninth grade prior to the 2011-2012 school year to pass a minimum number of subject assessments in order to be eligible to graduate under alternative requirements.

Comment: One administrator stated that the proposed rule only offers one viable alternative for out-of-school students to meet assessment requirements for graduation: the industry certification option. The commenter stated that this one option will not apply to many students and requested the addition of more alternatives for these students.

Agency Response: The agency disagrees that the proposed rule offers only one viable option for students and has determined

that the rule offers a variety of options for students to meet assessment requirements for graduation, including locally determined options if approved by the local board of trustees.

Comment: Two administrators expressed disappointment with the proposed alternative graduation requirements for students who were required to meet TAKS assessment graduation requirements. The commenters stated that the rule is not comparable with the individual graduation committee rule for students required to meet STAAR® assessment requirements for graduation.

Agency Response: The agency disagrees and has maintained requirements as proposed. The individual graduation committee process used for students who are still enrolled in school would be difficult to implement for individuals who are no longer enrolled.

Comment: Houston Independent School District (ISD) stated that the proposed rule clearly conforms to both the intent and letter of the law and provides an unambiguous, fair, valid, and easily administered set of criteria for school districts to use in evaluating their former students. The district added that the proposed criteria justify awarding a high school diploma to qualifying former students who have documented one or more of these achievements.

Agency Response: The agency agrees. In response to other comments, §74.1027(a), (c), and (d) have been modified at adoption to provide additional clarification.

Comment: Houston ISD requested quick adoption and implementation of the proposed rule to allow Texas school districts sufficient time to evaluate, prepare for, and implement the provisions of the rule prior to Spring 2018 graduation ceremonies.

Agency Response: The agency agrees. In response to other comments, §74.1027(a), (c), and (d) have been modified at adoption to provide additional clarification.

Comment: One parent expressed opposition to the proposed rule and stated that if a student has passed all the course requirements for graduation, then the student should be eligible for a high school diploma and should be permitted to graduate.

Agency Response: The agency disagrees. State law requires that students perform satisfactorily on state assessment instruments to be eligible to earn a high school diploma.

Comment: One community member asked about the meaning of §74.1027(d), "develop recommendations for additional alternative requirements."

Agency Response: The agency provides the following clarification. Section 74.1027(d) permits school districts to locally develop additional options to be used to allow eligible individuals to receive a high school diploma on the basis of the alternative requirements for graduation. In response to this and other comments, the term "additional" was changed to "local" in §74.1027(d) to clarify that the local alternative requirements in §74.1027(d) are not requirements that would have to be met in addition to requirements in §74.1027(c).

Comment: One counselor expressed support for the proposed rule and stated that it will assist young adults to pursue opportunities for higher education and higher paying jobs.

Agency Response: The agency agrees. In response to other comments, §74.1027(a), (c), and (d) have been modified at adoption to provide additional clarification.

Comment: One administrator asked why there must be different criteria for TAKS and STAAR® end-of-course students to meet assessment requirements when they have not performed satisfactorily on the assessment. The commenter requested a single process for all students.

Agency Response: The agency disagrees and has maintained requirements as proposed. The individual graduation committee process used for students who are still enrolled in school would be difficult to implement for individuals who are no longer enrolled.

Comment: The Texas School Alliance (TSA) stated that the statutory language associated with the proposed rule compels the commissioner to adopt rules that pertain to the criteria by which districts adopt alternative requirements for graduation and allows the commissioner to include some statewide considerations related to work, military, or other life experiences by which the affected students may graduate. TSA further stated that, as written, the proposed rule appears to restrict local district decisions rather than supplement them and goes beyond what the commissioner needs or is authorized to do.

Agency Response: The agency disagrees that the rule restricts local district decisions. Section 74.1027(d) permits school districts to locally develop additional options to be used to allow eligible individuals to receive a high school diploma on the basis of the alternative requirements for graduation. In response to this and other comments, the term "additional" was changed to "local" in §74.1027(d) to clarify that the local alternative requirements in §74.1027(d) are not requirements that would have to be met in addition to requirements in §74.1027(c).

Comment: The TSA commented that it appears to be unnecessarily intrusive to specify that district-level planning and decision-making committees provide input to their respective local school boards about the additional alternative requirements.

Agency Response. The agency agrees that it is not necessary to require input from district-level planning and decision-making committees. In response to this and other comments, §74.1027(d) has been modified at adoption to remove the requirement that a district receive input from the district-level planning and decision-making committee when adopting local alternative requirements.

Comment: An individual asked whether data regarding the number of attempts a student has made to pass a state assessment will be available to districts for all past students in the student portal and indicated that it will be easier if there is a common place for the district staff person to at least instruct the former student on how to get the information if districts cannot directly access it.

Agency Response: The agency provides the following clarification. District testing coordinators will be able to access student records in the assessment management system. Individuals will also be able to access their own records through the student portal.

Comment: An individual stated that the approved list or lists is not indicated in §74.1027(c)(3) regarding licensure or certification and stated that it will help if there is a single complete reference list as several are currently being referenced.

Agency Response: The agency agrees that additional clarity is necessary. In response to this and other comments, §74.1027(c)(3) has been modified at adoption to add a reference

to 19 TAC §74.1003, Industry-Based Certifications for Public School Accountability.

Comment: An individual asked whether college-level work must have been completed while enrolled in a college and be from an accredited institution and provided the example of successful completion of an advanced placement (AP) class without successful completion of the AP test.

Agency Response: The agency agrees that additional clarity is necessary. In response to this and other comments, §74.1027(c)(5) has been modified at adoption to clarify that successful completion of college-level coursework must result in earned college credit.

Comment: An individual asked whether an Eagle Scout project can be considered for Social Studies TAKS.

Agency Response: The agency provides the following clarification. Options not explicitly allowed in §74.1027(c) can be allowed locally with approval by the local district board of trustees.

Comment: An individual asked whether a diploma must have been granted or denied by the expiration date of September 1, 2019.

Agency Response: The agency provides the following clarification. Decisions regarding whether to issue a diploma must have been made by September 1, 2019.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §28.02541, which requires the commissioner of education by rule to establish a procedure to determine whether certain students who entered ninth grade before the 2011-2012 school year may qualify to graduate and receive a high school diploma. The commissioner is required to designate that the school district in which a student is enrolled or was last enrolled must make the decision regarding whether the student qualifies to graduate and receive a high school diploma. Additionally, the statute requires the commissioner to establish criteria for school districts to develop recommendations for alternative requirements by which a student subject to TEC, §28.02541, may qualify to graduate and receive a diploma. The statute also permits the commissioner to authorize the following as alternative requirements: an alternative assessment instrument and performance standard for that assessment instrument or work, military, or other relevant life experience.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §28.02541.

§74.1027. Diplomas for Certain Individuals Who Entered Grade 9 Before 2011-2012 School Year.

(a) Effective beginning with the 2017-2018 school year, in accordance with the Texas Education Code (TEC), §28.02541, a school district or an open-enrollment charter school may award a high school diploma to an individual who:

(1) entered Grade 9 before the 2011-2012 school year;

(2) successfully completed the curriculum requirements for high school graduation applicable to the individual when the individual entered Grade 9;

(3) has not performed satisfactorily on an assessment instrument or a part of an assessment instrument required for high school graduation, including an alternate assessment instrument offered under TEC, §39.025(c-1);

(4) has been administered at least three times the required subject-areas test(s) for which the individual has not performed satisfactorily on the exit-level assessment instrument applicable to the individual when the individual entered Grade 9; and

(5) meets the alternative requirements for graduation in accordance with subsection (c) of this section or the local alternative requirements approved by the board of trustees in accordance with subsection (d) of this section.

(b) The school district or open-enrollment charter school in which the individual is enrolled or was last enrolled shall determine whether the individual may qualify to graduate and receive a high school diploma on the basis of the alternative requirements for graduation.

(c) The alternative requirements for graduation shall permit an individual to qualify to graduate and receive a high school diploma if the individual:

(1) has met the performance standard on an alternate assessment as specified in §101.4003 of this title (relating to Texas Assessment of Knowledge and Skills Exit-Level Alternate Assessments);

(2) has performed satisfactorily on the applicable subject-area test of a state-approved high school equivalency examination in accordance with §89.43(a)(4) of this title (relating to Eligibility for a Texas Certificate of High School Equivalency);

(3) provides evidence of attainment of an industry-recognized postsecondary license or certification in accordance with §74.1003 of this title (relating to Industry-Based Certifications for Public School Accountability);

(4) provides evidence of current active duty service in the armed forces or a DD Form 214 indicating honorable or general discharge from the armed forces; or

(5) has successfully completed college-level coursework and earned college credit.

(d) With approval by the school district board of trustees, a school district may develop recommendations for local alternative requirements if the requirements would allow an individual to demonstrate proficiency in the content related to an examination for which the individual has not performed satisfactorily.

(e) A decision regarding whether the individual qualifies to graduate and receive a high school diploma is final and may not be appealed.

(f) The school district or open-enrollment charter school shall maintain documentation to support the decision to award or not award an individual a high school diploma.

(g) Provisions of this section expire September 1, 2019.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 13, 2018.

TRD-201801600
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: May 3, 2018
Proposal publication date: February 23, 2018
For further information, please call: (512) 475-1497

CHAPTER 129. STUDENT ATTENDANCE
SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §129.1025

The Texas Education Agency (TEA) adopts an amendment to §129.1025, concerning student attendance accounting. The amendment is adopted without changes to the proposed text as published in the December 29, 2017, issue of the *Texas Register* (42 TexReg 7510) and will not be republished. The amendment adopts by reference the *2018-2019 Student Attendance Accounting Handbook.* Although the text of §129.1025 did not change since published as proposed, changes to the handbook adopted by reference were made in response to public comment.

REASONED JUSTIFICATION. The TEA has adopted its student attendance accounting handbook in rule since 2000. Attendance accounting evolves from year to year, so the intention is to annually update 19 TAC §129.1025 to refer to the most recently published student attendance accounting handbook.

Each annual student attendance accounting handbook provides school districts and charter schools with the FSP eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, and details the responsibilities of all district personnel involved in student attendance accounting. The TEA distributes FSP resources under the procedures specified in each current student attendance accounting handbook. The final version of the student attendance accounting handbook is published on the TEA website. A supplement, if necessary, is also published on the TEA website.

The adopted amendment to 19 TAC §129.1025 adopts by reference the student attendance accounting handbook for the 2018-2019 school year.

Significant changes to the *2018-2019 Student Attendance Accounting Handbook* from the *2017-2018 Student Attendance Accounting Handbook* include the following.

Section 3, General Attendance Requirements

Texas Education Code (TEC), §25.081, and Chapter 42, specifically §42.005, establish the general parameters for attendance and school operation. The following changes implement reporting requirements for attendance and funding.

Language was added to define classroom time as instructional time for purposes of funding and the 2-through-4-hour rule.

Language was added to clarify that a child of a military family who moves to a Texas district from another state that is a member state of the Interstate Compact on Educational Opportunity for Military Children is entitled to continue enrollment at the same grade level, including kindergarten, in which the student was enrolled in the sending state regardless of the child's age.

A chart was added to provide guidance on the required number of operational and/or instructional minutes for districts and charter schools to receive full funding.

Language was added to encourage school districts and charter schools to ensure that the required number of minutes/days are built into the school board-approved calendar, as part of the third Texas Student Data System Public Education Information Management System (DUSTS POEMS) data submission, since districts and charters do not report their calendars to the TEA until after the school year is complete and may not realize they are subject to a funding reduction until time has expired to correct their calendars.

Language was added to specify that certain charter schools operating before January 1, 2015, are not subject to the 75,600-minute requirement. However, charter schools operating before January 1, 2015, must provide 180 days of attendance with a minimum of four hours of daily instruction with any applicable waivers and complying with their charter contract terms regarding student instructional time. In response to public comment, language was added at adoption to reflect that charter schools operating before January 1, 2015, will receive full average daily attendance (ADA) funding so long as they meet either the 75,600 minutes of operation or 180 days with a minimum of four hours of instructional time per day for calendar requirements.

Language was added to specify that a district must adopt a school calendar that is in accordance with the program type that is listed on the chart in Section 3.8. The district is encouraged to make sure that the adopted calendar includes additional minutes to account for at least two bad weather or other missed school days related to health and safety concerns.

Language was revised to specify that if due to weather, safety, or health issues, the school district or charter school falls short of the required number of minutes/days in accordance with the program type that is listed on the chart in Section 3.8 (beyond the additional minutes/days already built into the adopted school calendar for makeup minutes/days), a missed school day waiver application must be submitted using the TEA's automated waiver application system, which is available in the online TEA Login (TEAL) secure environment.

Language was added to state that staff development waiver minutes are for staff development in place of student instruction; therefore, the waiver minutes are only applicable to staff development provided instead of student instruction during the school year.

Language was added to state that staff development waiver minutes (days) may not be used prior to the first day of student instruction or after the last day of student instruction. On staff development days when students are in attendance part of the day, in order to receive full ADA funding, the district or open-enrollment charter school must provide at least 120 minutes of student instruction. In addition to the 120 minutes of student instruction, any staff development waiver minutes reported must reflect actual staff development minutes provided.

Language was added to specify that school districts and charter schools must demonstrate that they are providing high-quality staff development that will impact student outcomes.

In response to public comment, a change was made at adoption to Section 3.6.3, Requirements for a Student to Be Considered Present for FSP (Funding) Purposes, to state that an appointment must be supported by a document such as a note from the health care professional.

Section 4, Special Education

TEC, Chapter 42, specifically §42.151, authorizes funding for special education in certain circumstances. TEC, §42.004, authorizes the commissioner to require reports that may be necessary to implement and administer the Foundation School Pro-

gram (FSP). The following changes implement reporting for special education to account for attendance and funding.

Language was added to state that when a student who is eligible for special education but not eligible for prekindergarten (PK) is served in a PK classroom, the student must have a special education teacher or dually certified teacher in the classroom for the student's entire instructional day for ADA and weighted funding to be generated. If a special education teacher is not in the classroom for the student's entire instructional day, ADA will not be generated.

Section 5, Career and Technical Education (CTE)

TEC, Chapter 42, including §42.154, authorizes funding for CTE in certain circumstances. TEC, Chapter 29, Subchapter F, establishes general parameters for CTE programs. TEC, §42.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following changes implement reporting for CTE to account for attendance and funding.

Language was added to state that a student is not eligible to receive any CTE contact hours for partial participation.

A chart title was revised from "Combination of Classroom Instruction, Work-Based Instruction" to "Combination of Classroom Instruction and Work-Based Instruction (Work-site or Lab-Based)" for clarification purposes.

An example was added for clarification to demonstrate CTE contact hours that are required for participation in a CTE course.

Section 6, Bilingual/English as a Second Language (ESL)

TEC, Chapter 42, specifically §42.153, authorizes funding for bilingual or special language programs in certain circumstances. TEC, Chapter 29, Subchapter B, establishes general parameters for bilingual and special language programs. TEC, §42.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following changes implement reporting for bilingual and special language programs to account for attendance and funding.

Language was added to specify that the terms "exit" and "reclassify," as used in Section 6 of the handbook, are interchangeable with the term "transfer," used in the TEC, Chapter 29, Subchapter B.

Language was added to specify that if a district is required to provide a bilingual education program, trained district personnel must administer an oral language proficiency test in the home language of each student who is eligible to be served in the bilingual education program.

Language was added to explain that when a bilingual/ESL student moves to a school district, the district (the receiving district) should immediately begin serving the student in the bilingual or ESL education program while it works actively to secure documentation (language proficiency assessment committee (LPAC) records and assessment information) from the sending district. In the event that no LPAC records are received from the sending district, the receiving district should make multiple diligent, documented attempts to get the required documentation from the sending district to avoid possible miscoding.

Language was added to specify that a student must be served in a full-time bilingual instructional program by staff members certified to teach bilingual education. The amount of instruction in each language (the student's home language and English) must align with the TEA guidelines specific to either transitional bilingual programs (early exit, late exit) or dual language programs (one-way, two-way).

Language was added to specify that a student must be provided instruction in ESL by staff members certified to teach ESL or bilingual education. In PK through Grade 8, teachers must integrate the English language proficiency standards using second language acquisition methods while delivering content instruction, either via pull-out or content-based ESL programming.

Language was added to state that students in PK through Grade 5 (or through Grade 6, if Grade 6 is clustered with elementary grades) who are counted for funding in the transitional bilingual education program (early exit, late exit) must be served by bilingual-certified staff members. In dual language programs (one-way, two-way), a teacher assigned to the component of the program provided in a language other than English must hold a bilingual teaching credential. A teacher assigned to the component of a dual language program provided in English must be certified by the State Board for Educator Certification in either bilingual education or ESL.

Language was added to require that when a student enrolls in a Texas school for the very first time, the home language survey must be completed. This original home language survey must be retained in the student's record over the course of the student's educational career.

Language was added to establish that electronic parent signatures are permissible for home language surveys for students in PK through Grade 8.

Language was added to explain that for a student moving from one district to another within Texas, the original home language survey or a copy of the original home language survey must be kept in the student's record at the new district. If the original home language survey or a copy of the original home language survey cannot be located after multiple documented attempts, then a new home language survey must be conducted by the receiving district.

An example was added to Enrollment Procedures to explain the procedure to follow if a student is enrolled in a one-way dual language program starting in kindergarten and meets criteria to exit the program at the end of Grade 4.

Section 7, Prekindergarten (PK)

TEC, Chapter 29, Subchapter E, establishes special general parameters for PK programs. TEC, Chapter 42, including §42.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §42.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes implement reporting for PK to account for attendance and funding.

Additional language was added to specify that recipients of the Star of Texas Award that is given by the Office of the Governor, Criminal Justice Division, honors recipients that are eligible for free PK if they meet PK eligibility requirements. The resolution (certificate) awarded to an individual serves as proof of eligibility to enroll these children in free prekindergarten if they are age-eligible. A list of past honorees may be viewed on the Criminal Justice Division--Past Honorees webpage. Honorees may also provide a letter from their local representative as documentation for eligibility.

Section 11, Nontraditional Programs

TEC, Chapter 29, Subchapter A, establishes special general parameters for nontraditional programs. TEC, Chapter 42, including §42.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §42.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes implement reporting for nontraditional programs to account for attendance and funding.

Language was added to explain that a dropout recovery program in which courses are conducted online can be included in the Optional Flexible School Day Program (OFSDP) to provide flexible hours and days of attendance for students who have dropped out of school or are at risk of dropping out as defined by TEC, §29.081.

Language was added to explain that a student must receive a minimum of 45 minutes of instruction on any given day to accrue eligible OFSDP minutes for the day. For each 4 hours or 240 minutes of eligible instruction a student receives, the student earns one eligible day present. Eligible days present are then converted to ADA for funding purposes. The maximum number of instructional minutes allowed each school day, including any instructional time accounted for in traditional courses toward graduation requirements, is 600 minutes, or 10 hours. Instructional time for the OFSDP is funded at the same rate under the FSP formulas as attendance for ADA in the traditional program; however, a single course cannot accrue more than 10,800 minutes and a full-time equivalent student is expected to have a total of 43,200 minutes of instruction per year to generate one ADA.

Language was added to explain if an eligible student participates in a course offered through an online dropout recovery education program at a district or charter school with an approved OFSDP and meets the requirements for enrollment in a Texas public school district or charter school, the student is eligible to generate FSP funding for each course the student successfully completes. Online dropout recovery education programs must be able to track and report the number of minutes spent by an eligible student in each course so that minutes do not exceed the maximum allowed per course. Districts and charter schools must report ineligible minutes for courses that are not completed successfully.

Section 13, Appendix: Average Daily Attendance (ADA) and Funding

In response to public comment, a change was made at adoption to the definition of *school day* that states that school days are the total number of days that classes are held in the school year. The law requires that districts and charter schools operating after January 1, 2015, have 75,600 operational minutes unless a waiver has been issued to shorten the school year. Charter schools operating before January 1, 2015, must provide 180 days of attendance with a minimum of four hours of daily instruction with any applicable waivers and complying with their charter contract terms regarding student instruction time or provide 75,600 minutes of operation along with any applicable waivers.

Glossary

The definition of *instructional day* was revised.

The definition of *operational day* was revised.

A definition for *school day* was deleted.

A definition for *days of instruction* was added.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began December 29, 2017, and ended February 12, 2018. Following is a summary of public comments received and corresponding agency responses regarding the proposal.

Requirements for a Student to be Considered Present for FSP Funding Purposes

Comment: A school district employee requested that a telemedicine appointment be an exception as a medical absence to be considered present for FSP funding purposes.

Agency Response: The agency disagrees. A documented appointment with a licensed health care professional must be a face-to-face consultation to be considered present for FSP funding purposes. A consultation over the phone or via video (telemedicine) is not considered an appointment with a health care professional.

Comment: A school district employee requested that the statement of an appointment should be supported by a document, such as a note from the health care professional. The district representative added that the statement of an appointment did not seem to exclude documentation from a parent stating that a student had visited a licensed doctor or dentist. The district representative requested that for a medical appointment to be counted for FSP funding that clarification be added that the note should be from a health care professional and not a parent.

Agency Response: The agency agrees and has modified the handbook in Section 3.6.3, Requirements for a Student to Be Considered Present for FSP (Funding) Purposes, to state the appointment must be supported by a document, such as a note from the health care professional.

School Calendar

Comment: Texas Charter Schools Association (TCSA) requested clarification regarding calendar requirements for open-enrollment charter schools operating prior to January 1, 2015, specifically if open-enrollment charter schools would receive full ADA funding as long as they meet either the 75,600 minutes of operation or 180 days calendar requirements that align with the TEC, §42.005(a), which requires all open-enrollment charter schools to provide 75,600 minutes of operation in order to receive full ADA funding. TCSA commented that, in conjunction with House Bill 2442, TEC, §42.005(k), was added allowing charter schools operating prior to January 1, 2015, to be *eligible* for full ADA funding as the law existed prior to January 1, 2015.

Agency Response: The agency agrees and has modified the handbook to add language to the chart in Section 3.8, Calendar, to reflect that charter schools operating before January 1, 2015, will receive full ADA funding as long as they meet either the 75,600 minutes of operation or 180 days with a minimum of four hours of instructional time per day for calendar requirements.

School Day Definition

Comment: TCSA commented that language should be added to the definition of *school day* indicating that in special cases, as listed in TEC, §42.005(i)-(k), a school may receive full funding for a shorter school day.

Agency Response: The agency agrees and has modified Section 13 to clarify the definition of *school day.*

OFSDP

Comment: A school district employee commented that the rules currently in use for calculating attendance and funding for online programs, such as Texas Virtual School Network (TxVSN), would be the same for the online dropout recovery programs. The commenter stated this would be too difficult to implement and counters the legislative intent to reduce barriers for this population's ability to participate in their education and to the state's own methodology for performance-based funding for online courses.

Agency Response: The agency disagrees. OFSDP ADA is based on minutes of instruction provided and a minimum of 45 minutes each day, while TxVSN ADA is based on days present and requires a minimum of two hours (three courses) per day. The 45-minute threshold for starting the timer for funding is not a new requirement and has been part of the OFSDP program since inception, before it was expanded to include the online dropout recovery program. Students enrolled in courses through the TxVSN must complete a minimum of three courses to receive half of an ADA and five courses to receive one ADA for the year. As a result, students completing two courses do not receive any funding, and students completing four courses would only receive half of an ADA. The OFSDP allows for the school to be funded for the actual online instruction time and provides funding even when a student is enrolled in only one course. While each course cannot exceed a maximum of 10,800 minutes of instruction, students are not required to successfully complete the online course within the year in order to have the minutes earned count for funding. In order to generate one ADA, a student must receive 43,200 minutes of instruction a year and, considering the 10,800-minute limit per course, this would require the student to be enrolled in at least four courses to get the full ADA. Furthermore, while a student cannot exceed one ADA per year in either program, the OFSDP allows a student to earn all 43,200 minutes (one ADA) in one semester, while the TxVSN limits ADA earned to half of one ADA per semester. The OFSDP program attendance accounting rules provide greater flexibility for serving at-risk students.

TxVSN

Comment: An individual stated that Grades 3-8 students in a TxVSN full-time program who are promoted to the next grade in the second semester should generate at least half-year funding.

Agency Response: The agency disagrees. The Texas Education Agency gives a maximum of one ADA if a student attends both semesters in a school. A student must not generate more than the equivalent of one ADA in a school year.

Comment: An individual requested that Section 12.4 be modified to require that, for the duration of the course, a certified teacher for the appropriate grade level be present either in the room or in an online platform.

Agency Response: The agency disagrees. Time that a student spends in an online course that is not provided through the TxVSN and that the district provides to the student on the student's campus may be considered classroom time for FSP funding purposes as long as a certified teacher is present in the room in which the student is taking the course. This is to ensure that students have access to a certified teacher to ask questions and receive help if needed.

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §7.055(b)(35), which states that the commissioner shall perform duties in connection with the Foundation School Program (FSP) as prescribed by the TEC, Chapter 42; TEC, §25.081, as amended by House Bill (HB) 441 and HB 2442, 85th Texas Legislature, Regular Session, 2017, which states that for each school year, each school district must operate so that the district provides for at least 75,600 minutes, including time allocated for instruction, intermissions, and recesses, for students; TEC, §25.081(d), which authorizes the commissioner to adopt rules to implement the section; TEC, §25.081(f), which states that a school district may not provide student instruction on Memorial Day but that if a school district would be required to provide student instruction on Memorial Day to compensate for minutes of instruction lost because of school closures caused by disaster, flood, extreme weather conditions, fuel curtailment, or another calamity, the commissioner shall approve the instruction of students for fewer than the number of minutes required under TEC, §25.081(a); TEC, §25.0812, which states that school districts and charter schools may not schedule the last day of school for students before May 15; TEC, §25.087, as amended by Senate Bill (SB) 1152, 85th Texas Legislature, Regular Session, 2017, which requires that a school district excuse a student who is 17 years of age or older from attending school to pursue enlistment in a branch of the armed services of the United States or the Texas National Guard, provided that (1) the district may not excuse for this purpose more than four days of school during the period the student is enrolled in high school; and (2) the district verifies the student's activities related to pursuing enlistment in a branch of the armed services or the Texas National Guard. The statute requires each school district to adopt procedures to verify a student's activities as described by TEC, §25.087(b-5); TEC, §29.0822, as amended by HB 2442 and HB 3706, 85th Texas Legislature, Regular Session, 2017, which enables a school district to provide a program under this section that meets the needs of students described by TEC, §29.0822(a), for a school district that meets application requirements, including allowing a student to enroll in a dropout recovery program in which courses are conducted online; TEC, §30A.153, which states that, subject to the limitation imposed under the TEC, §30A.153(a-1), a school district or open-enrollment charter school in which a student is enrolled is entitled to funding under the TEC, Chapter 42, or in accordance with the terms of a charter granted under the TEC, §12.101, for the student's enrollment in an electronic course offered through the state virtual school network in the same manner that the district or school is entitled to funding for the student's enrollment in courses provided in a traditional classroom setting, provided that the student successfully completes the electronic course; TEC, §42.004, which states that the commissioner, in accordance with the rules of the State Board of Education, shall take such action and require such reports consistent with the TEC, Chapter 42, as may be necessary to implement and administer the FSP; TEC, §42.005, as amended by SB 2084 and HB 2442, 85th Texas Legislature, Regular Session, 2017, which states that average daily attendance is the quotient of the sum of attendance for each day of the minimum number of days of instruction as described under the TEC, §25.081(a), divided by the minimum number of days of instruction; TEC, §42.151, which states that for each student in average daily attendance in a special education program under the TEC, Chapter 29, Subchapter A, in a mainstream instructional arrangement, a school district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 1.1. For each full-time equivalent student in average daily attendance in a special education program under the TEC,

Chapter 29, Subchapter A, in an instructional arrangement other than a mainstream instructional arrangement, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by a weight determined according to its instructional arrangement; TEC, §42.152, which states that for each student who is educationally disadvantaged or who is a student who does not have a disability and resides in a residential placement facility in a district in which the student's parent or legal guardian does not reside, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 0.2, and by 2.41 for each full-time equivalent student who is in a remedial and support program under the TEC, §29.081, because the student is pregnant; TEC, §42.153, which states that for each student in average daily attendance in a bilingual education or special language program under the TEC, Chapter 29, Subchapter B, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 0.1; and TEC, §42.154, as amended by SB 22 and HB 3593, 85th Texas Legislature, Regular Session, 2017, which states that for each full-time equivalent student in average daily attendance in an approved career and technology education program in Grades 9-12 or in career and technology education programs for students with disabilities in Grades 7-12, a district is entitled to weighted funding.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code (TEC), §§7.055(b)(35); 25.081, as amended by House Bill (HB) 441 and HB 2442, 85th Texas Legislature, Regular Session, 2017; 25.0812; 25.087, as amended by Senate Bill (SB) 1152, 85th Texas Legislature, Regular Session, 2017; 29.0822, as amended by HB 2442 and HB 3706, 85th Texas Legislature, Regular Session, 2017; 30A.153; 42.004; 42.005, as amended by Senate Bill (SB) 2084 and HB 2442, 85th Texas Legislature, Regular Session, 2017; 42.151-42.153; and 42.154, as amended by SB 22 and HB 3593, 85th Texas Legislature, Regular Session, 2017.

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 April 13, 2018.

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CHAPTER 152. COMMISSIONER'S RULES CONCERNING EXAMINATION REQUIREMENTS

19 TAC §152.1001

The Texas Education Agency (TEA) adopts new §152.1001, concerning examination requirements. The new section is adopted without changes to the proposed text as published in the February 2, 2018, issue of the *Texas Register* (43 TexReg 526). The adopted new section implements the requirements of the Texas Education Code (TEC), §21.052(a-1), for the commissioner to adopt rules establishing exceptions to the examination requirements prescribed by TEC, §21.052(a)(3), for an educator from outside the state to obtain a certificate in Texas.

REASONED JUSTIFICATION. Senate Bill (SB) 1839, 85th Texas Legislature, Regular Session, 2017, changed TEC, §21.052, to permit the commissioner of education to adopt rules establishing exceptions to the examination requirements prescribed by TEC, §21.052(a)(3), for an educator from outside the state to obtain a certificate in Texas.

Adopted new 19 TAC §152.1001, Exceptions to Examination Requirements for Individuals Certified Outside the State, outlines the requirements that individuals certified outside the state must follow for consideration of an exception to the state-mandated examination requirements for certification. Commissioner authority to exempt individuals already certified in other states from Texas examination requirements supports the mobility of teachers transferring from state to state; reduces the burden of repetitive testing on educators that completed an educator preparation program, including student teaching or a teaching practicum; acknowledges demonstration of content knowledge and skills in their original state of licensure through successful completion of state-mandated examinations; and recognizes and respects the professionalism of the credential issued by the other state department of education or country of licensure.

Following is a description of adopted new 19 TAC §152.1001.

Subsection (a), General provisions.

Language clarifies the new authority provided by SB 1839 to permit the commissioner to establish exceptions to examination requirements for individuals certified outside the state.

Subsection (b), Definitions.

Language provides definitions for the following five key terms: standard certificate, professional class, Texas review of credentials, examination, and teacher service record. These terms are related to the Texas review of credentials process required of individuals certified outside the state. Establishing these key terms into rule clarifies the purpose and role of the processes and procedures already established for educators certified outside the state as related to their qualifications to be considered for an exception to the examination requirements for issuance of a Texas certificate.

Subsection (c), Minimum requirements.

Language in subsection (c)(1)(A)-(F) identifies the six requirements candidates must meet to be considered for an exception to the required examinations for issuance of a Texas certificate. TEA has determined that the required degree, completion of a state-approved educator program or program for licensure in another country, successful completion of examinations required for issuance of the standard certificate in the other state or country, one year of required experience serving as a classroom teacher, and two years of required experience serving in a role other than classroom teacher when the applicant does not also hold a classroom teaching certificate ensures that individuals certified outside the state have sufficient training and experience qualifying them to teach Texas students. TEA has also determined that establishing these minimum requirements aligns certification candidates outside the state with the general requirements and level of preparation expected of in-state candidates for certification.

Language in subsection (c)(2) clarifies that all applicants from outside the state that meet all the requirements specified in sub-

section (c)(1) must take the next step in the certification process by submitting the Texas online application and fee for a review of credentials and sending the required documents identified in subsection (c)(2)(A) for candidates certified in another state and the documents identified in subsection (c)(2)(B) for candidates licensed to teach in another country. All applicants for certification will be using the online application already established for issuance of Texas certification. To qualify for an exception from examination requirements in Texas, applicants must have taken and passed required examinations in their issuing state or country. An official score report confirming passing results on those required examinations must be submitted to TEA as part of the review process.

Subsection (d), Approval process.

Language in subsection (d)(1)-(5) explains the process TEA will use to review and approve exceptions to examination requirements. This process for the application, review, and approval of exceptions to examination requirements mirrors the steps already in place for the review of credentials for educators certified in other states and/or licensed to teach in other countries. By using the online application for certification already in place and by aligning established procedures with requirements established in rule for educators certified in other states (19 TAC Chapter 230, Professional Educator Preparation and Certification, Subchapter H, Texas Educator Certificates Based on Certification and College Credentials from Other States) and educators certified in other countries (19 TAC Chapter 245, Certification of Educators from Other Countries), TEA anticipates applicants seeking an exception to examination requirements will complete the review process and obtain certification in a timely manner.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began February 2, 2018, and ended March 5, 2018. Following is a summary of the public comments received and corresponding agency responses.

Comment: Two individuals commented that they are in support of the exemption from examination requirements.

Agency Response: The agency agrees and has maintained language as proposed.

Comment: A teacher stated that because she already took tests to obtain her current Arizona license, she should not have to take more tests to obtain licensure in Texas. The commenter also expressed willingness to pay a higher fee for issuance of a Texas certificate if she could be exempted from unnecessary and additional required examinations.

Agency Response: The agency agrees and has maintained language as proposed that allows for a waiver of examinations for educators certified in other states. While the TEA does not anticipate raising fees for certificate issuance, individuals seeking an exemption from required examinations must submit a review of credentials application, fee, and the required documentation (i.e., service record verifying required years of teaching experience and official test scores for issuance of licensure in the other state(s)) to determine their eligibility for an exemption from required examination(s) regardless of whether they have previously applied for a credentials review. Individuals who do not wish to submit the credentials review application, fee, and required documentation are still eligible to obtain standard certification in Texas by taking and passing required examinations identified in their initial review of credentials.

Comment: A teacher commented that she had to take three examinations to obtain her current New Mexico teaching license and that she hoped for an exemption from having to take Texas examinations. The commenter asked for additional information about the requirements to demonstrate proficiency on each section of the Core Subjects examination, the rationale behind the test attempt limit, and why a graduate holding a degree in education is not automatically certified to teach prekindergarten or Grades 1 or 2.

Agency Response: The agency agrees and has maintained language as proposed that allows for a waiver of examinations for educators certified in other states. Individuals who have already completed the credentials review process with TEA must submit a second review of credentials application, fee, and the required documentation (i.e., service record verifying required years of teaching experience and official test scores for issuance of licensure in the other state(s)) to determine their eligibility for an exemption from required examination(s). TEA staff responded separately to address the educator's questions that were beyond the scope of these rules and included information about the legislation aligned with each initiative in question.

Comment: School district staff members from Texarkana Independent School District (ISD), McKinney ISD, Amarillo ISD, and Northside ISD commented in support of the exemption. The staff member from Amarillo ISD stated he would not be in support of the rule if individuals certified outside the state are required to have one year of teaching experience to qualify for the exemption. The staff member from Texarkana ISD commented that the state should honor out-of-state certificates with reciprocity as her district has a hard time finding enough educators to fill their needs. The staff members from McKinney ISD and Northside ISD asked if individuals would be eligible for exemption from examination requirements if they have already completed a review of credentials prior to the effective date of the rule.

Agency Response: The agency agrees that the new rule offers a pathway for reciprocity for individuals certified outside the state that meet the minimum requirements specified in the rule. The agency also offers the following clarification. Individuals certified outside the state without the required one year of teaching experience in a classroom area can apply for issuance of the Texas one-year certificate and complete the required year of experience in a Texas classroom without having to take an examination. The year of service in Texas will still need to be documented on an official service record and submitted to TEA prior to issuance of the standard certificate. TEA staff has determined that this option provides an alternative for individuals that may move to Texas before having an opportunity to teach for a year in another state.

Comment: The Association of Texas Professional Educators commented that individuals certified as classroom teachers in other states should be required to have a minimum of two years of teaching experience to qualify for exemption from examination requirements.

Agency Response: The agency disagrees. The current process for individuals certified outside the state allows them to have their credentials reviewed and be issued a temporary one-year certificate that qualifies them to immediately step into a classroom teacher or other-than-classroom-teacher role with no years of experience. The temporary certificate allows educators from out of state to acquire the one year of experience needed for a permanent certificate, but it would not allow for two years if the experience requirement was increased. TEA staff has deter-

mined that one year of experience for a classroom teacher and two years of experience for other-than-classroom-teacher certificate areas are reasonable requirements for implementation of the rule.

Comment: Educate Texas commented that a requirement should be added that eliminates individuals certified in other states from being eligible for an exemption from examination requirements if they have attempted and/or failed certification tests. Educate Texas also recommended minor revisions to the rule to confirm the required years of verifiable, full-time experience should be *"at least* one academic year" for a classroom certificate and *"at least* two years" for a certificate other than classroom teacher.

Agency Response: The agency disagrees with the recommendation to not allow individuals to qualify for the exemption if they have attempted to meet certification requirements by taking Texas examinations. Individuals who have completed the review of credentials process are instructed by the agency to take and pass required tests to establish their standard certificate. Most individuals certified in other states that gain employment in Texas are encouraged by their employing districts to establish a standard certificate prior to or by the expiration date of their one-year temporary certificate to maintain eligibility for employment in Texas. Thus, individuals attempt tests in their good faith effort to follow the state's instructions to obtain licensure. TEA staff has determined it would be unfair to ban these individuals from the opportunity to apply for and, if eligible, be granted an exemption from examination requirements while allowing the exemption for others who have never attempted the tests. The agency also disagrees with the recommendation to modify the rule text as staff has determined this is an unnecessary change and would not substantively change the meaning of the rule.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §21.052(a-1), as added by Senate Bill 1839, 85th Texas Legislature, Regular Session, 2017, which permits the commissioner to adopt rules establishing exceptions to the examination requirements prescribed by TEC, §21.052(a)(3), for an educator from outside the state to obtain a certificate in this state.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §21.052(a-1), as added by Senate Bill 1839, 85th Texas Legislature, Regular Session, 2017.

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 April 13, 2018.

TRD-201801601
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: May 3, 2018
Proposal publication date: February 2, 2018
For further information, please call: (512) 475-1497

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TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 133. GENERAL MEDICAL PROVISIONS

SUBCHAPTER B. HEALTH CARE PROVIDER BILLING PROCEDURES

28 TAC §133.30

The Texas Department of Insurance, Division of Workers' Compensation (division) adopts new 28 Texas Administrative Code (TAC) §133.30, Telemedicine and Telehealth Services. New §133.30 is adopted with changes to the proposed text published in the March 2, 2018, issue of the *Texas Register* (43 TexReg 1232). The public comment period closed on April 2, 2018, and the division received 11 written comments. In response to written comments, the division is making changes to the proposed text. The division is changing the proposed text by adding two new paragraphs to §133.30(b). The additional paragraphs in the rule will clarify the division's goals and mirror existing Texas regulations by adopting Occupations Code definitions of telemedicine health services and telehealth services by reference. An informal working draft of new §133.30 was published on the division's website on September 22, 2017.

In accordance with Government Code §2001.033, the division's reasoned justification for these rules is set out in this order, which includes the preamble. The following paragraphs set forth a detailed section-by-section description of, and reasoned justification for, all amendments to §133.30.

Labor Code §402.021, Goals; Legislative Intent; General Workers' Compensation Mission of Department, establishes the basic goals of the Texas workers' compensation system, which include ensuring that each injured employee has access to prompt, high-quality medical care and that each injured employee receives services to facilitate the employee's return to employment as soon as it is considered safe and appropriate. In implementing these goals, the Legislature requires the workers' compensation system to take maximum advantage of technological advances to provide the highest levels of service possible. Telemedicine and telehealth services are currently authorized in the Texas workers' compensation system under 28 TAC §134.203, Medical Fee Guideline for Professional Services. Section 134.203 implements Labor Code §413.011, Reimbursement Policies and Guidelines; Treatment Guidelines and Protocols, by adopting the most current reimbursement methodologies, models, and values or weights used by the federal Centers for Medicare and Medicaid Services (CMS) specific to Medicare. This includes applicable Medicare payment policies related to coding, billing, and reporting, as well as 42 Code of Federal Regulations (CFR) §410.78, Telehealth Services, which authorize payment for telehealth office and other outpatient visits, consultations, examinations, services, etc. if certain conditions are met. These specified Medicare payment policy conditions restrict billing and reimbursement of telemedicine and telehealth services in the workers' compensation system to a specific set of designated services furnished to an injured employee at an originating site as defined by CMS. CMS payment policies further require that the originating site be located in a county outside of a Metropolitan Statistical Area (MSA) or in a rural health professional shortage area (HPSA) located in a rural census tract. Fur-

ther, originating sites are limited to one of eight defined medical facilities, including a physician or practitioner office, critical access hospital, and a rural health clinic. Thus, pursuant to Medicare payment policies, telemedicine and telehealth services in the workers' compensation system currently may only be billed and reimbursed when provided to an injured employee at a Medicare authorized originating site located in a HPSA or in a county outside of an MSA.

New §133.30 expands access to telemedicine and telehealth services within the Texas workers' compensation system by authorizing health care providers to bill and be reimbursed for telemedicine or telehealth services regardless of where an injured employee is located at the time services are provided. It creates an exception to Medicare payment policy restrictions requiring that telemedicine or telehealth services be furnished at an originating site and requiring that the originating site is located in a HPSA or county outside an MSA. Instead, under the new rule, a health care provider will be able to bill and be reimbursed for telemedicine or telehealth services provided within the workers' compensation system with no restriction on the geographic area or location of the injured employee at the time the services are provided. Medicare payment policies that restrict billing and reimbursement of telemedicine and telehealth services in the workers' compensation system to a specific set of services designated by CMS remain intact. New §133.30 furthers the legislative intent found in Labor Code §402.021 that the workers' compensation system must take maximum advantage of technological advances and to ensure that injured employees have access to prompt, high-quality medical care.

The division emphasizes that new §133.30 simply creates an exception to the current billing and reimbursement requirements for telemedicine and telehealth services. It does not change who may provide the services, which is established by the individual health care provider's regulatory or licensing board and state law. Health care providers are encouraged to review their applicable board regulations for information on scope of practice and specific requirements for practicing telemedicine or telehealth. The division emphasizes that telemedicine or telehealth services are an additional, voluntary option for injured employees and the new rule does not affect the employee's entitlement to initial choice of doctor, pursuant to Labor Code §408.022 or Insurance Code §1305.104. In addition, new §133.30 does not change any other portion of the current billing and reimbursement requirements for telemedicine or telehealth services. New §133.30 restates the existing billing and reimbursement framework for telemedicine and telehealth services and establishes an exception to help expand access to those services.

Section 133.30 addresses Telemedicine and Telehealth Services. New §133.30(a) establishes the applicability of new §133.30 by specifying that the section applies to medical billing and reimbursement for telemedicine and telehealth services provided on or after September 1, 2018, in the Texas workers' compensation system, including in workers' compensation health care networks established under Insurance Code Chapter 1305. This subsection is necessary to outline the applicability of new §133.30 in a clear and direct manner. It establishes a delayed applicability date to help allow for ease of implementation, while balancing the goal of new §133.30 to expand access to telemedicine and telehealth services. The applicability of new §133.30 mirrors existing requirements regarding billing and reimbursement for telemedicine and telehealth services found throughout the Labor Code, Insurance Code, and TAC. Labor Code §413.011, Reimbursement Policies and Guidelines; Treatment Guidelines and Protocols, requires the division to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications. In order to achieve the required standardization, §413.011 requires the division to adopt the most current reimbursement methodologies, models, and values or weights used by CMS. This includes applicable payment policies related to coding, billing, and reporting. Under §134.203, system participants are required to apply applicable Medicare payment policies for coding, billing, reporting, and reimbursement of professional medical services. "Medicare payment policies" is defined as reimbursement methodologies, models, and values or weights, including its coding, billing, and reporting payment policies set forth by CMS. Thus, CMS payment policies specific to Medicare, including those authorizing payment for telemedicine and telehealth services and providing the required billing, coding, and reporting guidelines for reimbursement of those services, are adopted by reference into the Texas workers' compensation system and system participants are required to bill and reimburse accordingly under §134.203.

New §133.30(a) applies the section's requirements to medical billing and reimbursement for telemedicine and telehealth services in the Texas workers' compensation system, including in health care networks under Insurance Code Chapter 1305. Section 134.203 applies to professional medical services provided in the system other than those provided through a workers' compensation health care network certified pursuant to Insurance Code Chapter 1305, except as provided in Insurance Code Chapter 1305. Thus, while all system participants with non-network claims must bill and reimburse according to CMS payment policies specific to Medicare, those same Medicare payment policies only apply to networks to the extent provided for under Insurance Code Chapter 1305. Insurance Code §1305.153, Provider Reimbursement, states that billing by, and reimbursement to, providers is subject to the requirements of the Labor Code and applicable division rules that are consistent with Insurance Code Chapter 1305. These sections (Texas Administrative Code §134.203 and Insurance Code §1305.153) operate to create a conflict provision that applies Labor Code provisions and division rules regarding billing and reimbursement, such as the Medicare payment policies, to networks as long as they do not conflict with Insurance Code Chapter 1305.

Section 1305.153(a) states that the amount of reimbursement for services provided by a network provider is determined by the contract between the network and the provider or group. Section 1305.153(d) states that applicability of Labor Code provisions and division rules relating to billing and reimbursement of providers cannot be construed to require application of a rule regarding reimbursement if that application would negate the reimbursement amount negotiated by the network. These are express conflicts that negate the applicability §134.203 requirements addressing the reimbursement amount for medical services, including telemedicine and telehealth services. However, there are no similar conflicts regarding billing and reimbursement requirements for telemedicine and telehealth services. Therefore, CMS payment policies specific to Medicare addressing billing and reimbursement, but not the reimbursement amount, apply to networks under Insurance Code Chapter 1305.

In addition, §133.20(c), Medical Bill Submission by Health Care Provider, requires health care providers to include correct billing codes from applicable division fee guidelines when submitting

medical bills. Section 133.1 applies Chapter 133 to medical billing and processing for services provided to both injured employees in a network established under Insurance Code Chapter 1305 and those not in a network. As such, §133.30(a) establishes that the requirements of new §133.30 apply to medical billing and reimbursement for telemedicine and telehealth services across the Texas workers' compensation system, including in health care networks under Insurance Code Chapter 1305.

New §133.30(b) defines "telemedicine services" and "telehealth services" as those terms are defined in Occupations Code §111.001. New §133.30(b)(1) adds "telemedicine services" as "telemedicine medical services as defined in Occupations Code §111.001." New §133.30(b)(2) adds "telehealth services" as "telehealth services as defined by Occupations Code §111.001." These additions are being made in response to comments and the change is being made to provide clarity in the rule. Workers' compensation system participants include both physicians and other health care providers, and both telehealth services and telemedicine services may be provided within the system. See, for example, the definition of "health care provider" in Labor Code §401.011(22), General Definitions, which includes a health care facility and a health care practitioner. A health care practitioner is defined in §401.011(21) as an individual who is licensed to provide or render and provides or renders health care, or a non-licensed individual who provides or renders health care under the direction or supervision of a doctor. Instead of creating a new, unrecognized definition for telemedicine or telehealth services in the workers' compensation system, new §133.30(b)(1) and (2) mirror existing Texas regulations by adopting the Occupations Code definitions by reference. In addition, the definitions help capture the scope of telemedicine/telehealth services authorized in Texas, which are then effectively limited through Medicare payment policies.

New §133.30(c) affirms the existing requirement that health care providers must bill for telemedicine and telehealth services according to applicable Medicare payment policies, as defined in §134.203, and the provisions of Chapter 133. As outlined above, telemedicine and telehealth services are currently authorized in the Texas workers' compensation system under §134.203, which implements Labor Code §413.011. Medical billing and reimbursement for telemedicine and telehealth services, including services by network providers under Chapter 1305, must be billed according to applicable requirements found in §134.203 and Chapter 133. New §133.30(c) also affirms the existing billing and reimbursement structure for telemedicine and telehealth services and is necessary to ensure the rule provides a clear and concise framework to system participants. The subsection is also necessary to provide essential context for the exception that follows in subsection (d).

New §133.30(d) establishes an exception to Medicare payment policies by allowing a health care provider to bill and be reimbursed for telemedicine or telehealth services regardless of where the injured employee is located at the time the telemedicine or telehealth services are provided. 42 CFR §410.78 defines "originating site" as the location of an eligible beneficiary at the time the service being furnished via a telecommunications system occurs. Under 42 CFR §410.78(b), Medicare authorizes payment for a specified set of services furnished by an interactive telecommunications system when the enumerated conditions are met, including that the services are furnished to a beneficiary at an authorized originating site and that the originating site is located in a HPSA or in a county that is not included in an MSA. Authorized originating sites include: (1) the office of a physician or practitioner; (2) a critical access hospital; (3) a rural health clinic; (4) a federally qualified health center; (5) a hospital; (6) a hospital-based or critical access hospital-based renal dialysis center; (7) a skilled nursing facility; and (8) a community mental health center.

The effect of 42 CFR §410.78 is to restrict telemedicine and telehealth services to those provided in rural communities identified as HPSAs or in counties outside of an MSA and even then, only when the injured employee presents at an authorized location. The exception established in new §133.30(d) is necessary to remove this limitation and help expand access to telemedicine and telehealth services in the Texas workers' compensation system. As outlined above, Labor Code §413.011 requires the division to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications. Section 134.203 implements Labor Code §413.011 by adopting Medicare payment policies, which include those payment policies relating to telemedicine and telehealth. The exception established in new §133.30(d) is a minimal modification to the adopted Medicare payment policies, and does not change any other portion of the current billing and reimbursement requirements for telemedicine and telehealth services. New §133.30(d) simply allows health care providers to bill and be reimbursed for telemedicine and telehealth services regardless of where an injured employee is located at the time the services are provided.

New §133.30(e) provides that, in the event of a conflict, §133.30 takes precedence over provisions adopted or utilized by CMS. The subsection mirrors similar conflict provisions found throughout the Texas Administrative Code (see, for example, §134.203) and is necessary to express the division's intent that a conflict between the exception in (d) and Medicare requirements is resolved in favor of the exception. In other words, that health care providers may bill and be reimbursed for telemedicine and telehealth services regardless of the injured employee's location, despite the geographic requirements found in Medicare's payment policies.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Comment: Several commenters support the division's rule as proposed and are in agreement that the rule will expand access of telemedicine services to injured workers.

Division Response: The division appreciates the supportive comments.

Comment: Commenters support the division's rule as proposed and state that the rule does not change who may provide the services, which is established by the individual health care provider's regulatory or licensing board.

Division Response: The division appreciates the supportive comments and agrees that the division's rule does not address or affect a health care provider's scope of practice in Texas.

Comment: Commenters support the division's rule as proposed and request that the division monitor system participants to ensure that telemedicine is consistent with medical standards, quality of care requirements, and that documentation in medical record keeping is adequate for reimbursement of telemedicine services.

Division Response: The division appreciates the supportive comments. The division will continue to meet its statutory obligation to monitor system participants in accordance with Labor Code Chapters 413 and 414. All system participants play a role

in monitoring activity within the system and should report any potential violations of the Act or division rules to the division.

Comment: Commenter questions how a physical therapist would be able to use their educational tools of differential diagnosis to screen for appropriate medical referral.

Division Response: The division notes that the commenter is asking for guidance on how one might provide health care, which is outside the scope of the proposed rule. The division notes that health care provided in the workers' compensation system must meet applicable legal standards regardless of how the health-care is provided. Also please note that the division has adopted Medicare payment policies by reference, which only authorize certain services to be delivered via telemedicine or telehealth.

Comment: Commenter expresses concern that by not also expanding the policy to cover other Telehealth Services provided by specialty providers such as Physical Therapists the division will not take advantage of technological advances or ensure that injured employees have access to prompt, high-quality medical care. Commenter strongly urges the addition of physical therapy to the code for Telehealth Services.

Division Response: The division declines to make the suggested change at this time. The division is making minimal modifications to Medicare reimbursement limitations to allow telemedicine and telehealth services to be provided and paid for regardless of where an injured employee is located at the time services are provided. Under §134.203, system participants are required to apply Medicare payment policies, which only authorize payment for certain services delivered via telemedicine or telehealth. The division may expand the types of telemedicine or telehealth services that are reimbursable at a future date.

Comment: Commenter seeks confirmation from the division that the division is only removing Medicare's originating site requirement that the service is only reimbursed if the patient is in an originating site located in a rural Health Professional Shortage Area and that the service is limited to established health care or medical site.

Division Response: The division confirms that goal is to remove the geographic location restrictions and established health care or medical site requirements imposed by Medicare payment policies.

Comment: Commenter is generally supportive of the goal to remove some of the originating site and geographic requirements from the Medicare payment policy requirements for telemedicine or telehealth services provided in the system.

Division Response: The division appreciates the supportive comment.

Comment: Commenter emphasizes the importance of clarity in rulemaking on the topic, as it is necessary to guide physicians and other practitioners in compliance efforts and to ensure patient care is paramount within system. Clarity is also necessary to aid physicians and other practitioners in determining which services are reimbursable within the system.

Division Response: The division agrees that clarity in rulemaking is necessary, thus, this preamble clearly state the division's goal to expand the availability of telemedicine and telehealth services in the workers' compensation system.

Comment: Commenter states that using the telehealth and telemedicine medical service definitions from the Occupations Code creates confusion because the terms are defined very differently from Medicare's use of telehealth/telemedicine service.

Division Response: The division agrees with the commenter and is making changes to the rule text to clarify the rule and to mirror existing Texas regulations by adopting the Occupations Code definitions for telemedicine health services and telehealth services.

Comment: Commenter requests clarification on whether the division's intentions are to follow the more restrictive Medicare perspective on telehealth and telemedicine prior to the passage of Senate Bill 1107 which commenter states was limited to services using only audio and a visual communications. Commenter states that historically Medicare did not reimburse for telephone services. Commenter expresses confusion on which approach the division is taking because subsection (e) appears to remove the more restrictive Medicare perspective.

Division Response: The division adopted Medicare payment policies in 28 TAC §134.203. These payment policies, including billing, coding, and reporting, apply to telemedicine and telehealth services in networks and non-networks. Per Medicare, as a condition of payment, health care providers must use an interactive audio and video telecommunications system that permits real-time communication between the health care provider, at the distant site, and the injured employee, at the originating site.

Comment: Commenter expresses concerns about combining the definition of telemedicine services and telehealth services because it removes the distinction between physicians and other health care providers. Additionally it makes subsection (d) more confusing- referring to "a health care provider"- because it makes it sound as though a health care provider could bill for a physician's telemedicine service even if they are not a physician. Commenter recommends separating the terms or making it clear that a health care provider may bill for an appropriate service.

Division Response: The division agrees that combining telemedicine services and telehealth services into one definition might cause confusion and is making a change to the rule text to clarify the definitions. The division disagrees that using "health care provider" in subsection (d) is confusing. "Health care provider" is a defined term in Labor Code §401.011(22) and means a health care facility or a health care practitioner. A health care practitioner is defined as an individual who is licensed to provide or render and provides or renders health care or a non-licensed individual who provides or renders health care under the direction or supervision of a doctor. In addition, rule §134.203 states in subsection (c) that a health care provider shall apply Medicare payment policies including Medicare coding and billing requirements. This provision accounts for the differences in billing between different health care providers.

Comment: Commenter recommends the Division address the use of AMA Guides to the Evaluation of Permanent Impairment and the Official Disability Guidelines in telemedicine exams. Commenter states that the use of approved medical guides in telemedicine exams will ensure injured employees obtain consistent medical care on par with on-site visits.

Division Response: The division appreciates the comment, but declines to make recommended changes to the rule text. The division notes that the The AMA Guides for the Evaluation of Permanent Impairment are used in the system by doctors to assign impairment ratings to injured employees once injured em-

ployees have reached Maximum Medical Improvement (MMI). The billing and reimbursement requirements for these MMI and impairment rating examinations can be found in Chapter 134, Subchapter C. The division notes that the billing codes for these examinations are not included in the list of telemedicine or telehealth billing codes currently authorized by Medicare's payment policies. Therefore, doctors currently cannot be reimbursed for performing MMI and impairment rating examinations while using telemedicine or telehealth services.

The division also notes that the adopted rule does not change the applicability of the division's adopted treatment guidelines (the Official Disability Guidelines Treatment in Workers' Comp) for non-network claims or the certified health care network's adopted treatment guidelines for network claims and that these treatment guidelines should be used regardless of how the healthcare is provided.

Comment: Commenter expresses concern regarding the impact of telemedicine exams on the dispute resolution process. Commenter recommends the division address the use of subpoenas to obtain videos of telemedicine exams. Commenter states that the use of telemedicine exams in the dispute resolution process will help fulfill the legislative requirement found in Labor Code §402.021 that injured employees have access to a fair and accessible dispute resolution process.

Division Response: The division appreciates the comment. However, the comment raises matters outside the scope of the rule. The rule does not alter or expand current regulations relating to the introduction of evidence at a hearing conducted by the division.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL

For:

National Association of Mutual Insurance Companies, American Insurance Association, Concentra, Property Casualty Insurers Association of America, Texas Occupational Therapy Association, Inc., Texas Mutual Insurance Company, Insurance Council of Texas.

For, with changes: Texas Medical Association, Office of Injured Employee Counsel.

Against: None.

Neither for nor against: One individual, Texas Physical Therapy Association.

New §133.30 is adopted under the authority of Labor Code §401.011, General Definitions; Labor Code §402.00111, Relationship Between Commissioner of Insurance and Commissioner of Workers' Compensation, Separation of Authority, Rulemaking; Labor Code §402.00116, Chief Executive; Labor Code §402.021, Goals; Legislative Intent; General Workers' Compensation Mission of the Department; Labor Code §402.061, Adoption of Rules; Labor Code §413.011, Reimbursement Policies and Guidelines; Treatment Guidelines and Protocols; Labor Code 413.0511, Medical Advisor; Insurance Code §1305.003, Limitations on Applicability; and, Insurance Code §1305.153, Provider Reimbursement.

Labor Code §401.011 defines a health care provider to include a health care facility and a health care practitioner, and defines a health care practitioner as an individual licensed to provide or render and provides or renders health care or a non-licensed individual under the direction or supervision of a doctor.

Labor Code §402.00111(a) states that, except as otherwise provided, the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under Title 5 of the Labor Code.

Labor Code §402.00116 establishes the commissioner of workers' compensation as the division's chief executive and administrative officer, and requires the commissioner to administer and enforce the Act.

Labor Code §402.021 states two basic goals of the Texas workers' compensation system are to ensure that each employee has access to prompt, high-quality medical care and receives services to facilitate the employee's return to employment as soon as it is safe and appropriate. In implementing these goals, the system must take maximum advantage of technological advances to provide the highest levels of service possible to system participants.

Labor Code §402.061 authorizes the commissioner to adopt rules as necessary for the implementation and enforcement of the Act.

Labor Code §413.011 requires the commissioner to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications, and in order to achieve the required standardization, the commissioner must adopt the most current reimbursement methodologies, models, and values or weights, including those related to coding billing, and reporting, used by the federal Centers for Medicare and Medicaid Services.

Labor Code §413.0511 states that the medical advisor shall make recommendations regarding the adoption of rules and policies to develop, maintain, and review guidelines as provided by §413.011.

Insurance Code §1305.003 states that in the event of a conflict between the Act and Chapter 1305 under a number of circumstances, Chapter 1305 prevails.

Insurance Code §1305.153 states that billing by, and reimbursement to, contracted and out-of-network providers is subject to the requirements of the Act and applicable rules of the commissioner that are consistent with Chapter 1305.

§133.30. Telemedicine and Telehealth Services.

(a) This section applies to medical billing and reimbursement for telemedicine and telehealth services provided on or after September 1, 2018, to injured employees in the Texas workers' compensation system, including injured employees subject to a workers' compensation health care network established under Insurance Code Chapter 1305.

(b) For the purposes of this section:

(1) "telemedicine services" means telemedicine medical services as defined in Occupations Code §111.001; and

(2) "telehealth services" means telehealth services as defined in Occupations Code §111.001.

(c) Except as provided in subsection (d) of this section, a health care provider must bill for telemedicine and telehealth services according to applicable:

(1) Medicare payment policies, as defined in §134.203 of this title; and

(2) provisions of Chapter 133 of this title.

(d) A health care provider may bill and be reimbursed for telemedicine or telehealth services regardless of where the injured employee is located at the time the telemedicine or telehealth services are provided.

(e) The provisions of this section take precedence over any conflicting provisions adopted or utilized by the Centers for Medicare and Medicaid Services in administering the Medicare program.

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 April 16, 2018.

TRD-201801623
Nicholas Canaday III
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: May 6, 2018
Proposal publication date: March 2, 2018
For further information, please call: (512) 804-4703

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 348. JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAMS

The Texas Juvenile Justice Department (TJJD) adopts the repeal of §§348.100, 348.101, 348.102, 348.104, 348.106, 348.108, 348.110, 348.112, 348.114, 348.116, 348.118, 348.120, 348.122, 348.124, 348.126, 348.128, 348.130, 348.132, 348.134, 348.136, 348.138, 348.200, 348.202, 348.204, and 348.206, concerning Juvenile Justice Alternative Education Programs, without changes to the proposed text as published in the February 2, 2018, issue of the *Texas Register* (43 TexReg 550).

JUSTIFICATION FOR CHANGES

The public benefit anticipated as a result of this rulemaking action is to allow for the adoption of a revised chapter.

SECTION-BY-SECTION SUMMARY

The repeal of §348.100 allows for the content to be revised and republished as new §348.100.

The repeal of §348.101 allows for the content to be revised and republished as new §348.104.

The repeal of §348.102 allows for the content to be revised and republished as new §348.102.

The repeal of §348.104 allows for the content to be revised and republished as new §348.200.

The repeal of §348.106 allows for the content to be revised and republished as new §348.202.

The repeal of §348.108 allows for the content to be revised and republished as new §348.204.

The repeal of §348.110 allows for the content to be revised and republished as new §348.206.

The repeal of §348.112 allows for the content to be revised and republished as new §348.208.

The repeal of §348.114 allows for the content to be revised and republished as new §348.210.

The repeal of §348.116 allows for the content to be revised and republished as new §348.212.

The repeal of §348.118 allows for the content to be revised and republished as new §348.214.

The repeal of §348.120 allows for the content to be revised and republished as new §348.216.

Sections 348.122, 348.124, 348.126, 348.128, and 348.130 are repealed to eliminate redundancy. Chapter 341 of this title addresses requirements for the use of restraints in non-residential settings within juvenile justice programs, which includes juvenile justice alternative education programs. These requirements do not need to be repeated in this chapter.

The repeal of §348.132 allows for the content to be revised and republished as new §348.220.

The repeal of §348.134 allows for the content to be revised and republished as new §348.222.

The repeal of §348.136 allows for the content to be revised and republished as new §348.224.

The repeal of §348.138 allows for the content to be revised and republished as new §348.106.

The repeal of §348.200 allows for the content to be revised and republished within new §348.200.

Section §348.202 is repealed because TJJD does not provide an annual evaluation of JJAEPs. TJJD's evaluation of JJAEPs is addressed in new §348.300 (formerly §348.206).

The repeal of §348.204 allows for the content to be revised and republished within new §348.208.

The repeal of §348.206 allows for the content to be revised and republished within new §348.300.

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rulemaking actions.

SUBCHAPTER A. PROGRAM OPERATIONS

37 TAC §§348.100 - 348.102, 348.104, 348.106, 348.108, 348.110, 348.112, 348.114, 348.116, 348.118, 348.120, 348.122, 348.124, 348.126, 348.128, 348.130, 348.132, 348.134, 348.136, 348.138

STATUTORY AUTHORITY

The repeals are adopted under Section 221.002(a)(5), Human Resources Code, which requires TJJD to adopt reasonable rules that provide minimum standards for juvenile justice alternative education programs created under Section 37.011, Education Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. ACCOUNTABILITY

37 TAC §§348.200, 348.202, 348.204, 348.206

STATUTORY AUTHORITY

The repeals are adopted under Section 221.002(a)(5), Human Resources Code, which requires TJJD to adopt reasonable rules that provide minimum standards for juvenile justice alternative education programs created under Section 37.011, Education Code.

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CHAPTER 348. JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAMS

The Texas Juvenile Justice Department (TJJD) adopts new §§348.100, 348.102, 348.104, 348.106, 348.202, 348.206, 348.210, 348.212, 348.216, 348.218, 348.220, 348.222, 348.224, and 348.300, concerning Juvenile Justice Alternative Education Programs (JJAEPs), without changes to the proposed text as published in the February 2, 2018, issue of the *Texas Register* (43 TexReg 552).

TJJD also adopts new §§348.200, 348.204, 348.208, 348.214, and 348.400, concerning JJAEPs, with changes to the proposed text as published in the February 2, 2018, issue of the *Texas Register* (43 TexReg 552).

Changes to the proposed text of §348.200 include specifying the parameters (e.g., time periods, data sources) to be used when JJAEPs complete their annual performance reviews. The specific parameters are described in more detail later in this notice. Changes to this section also include a minor stylistic revision.

Changes to the proposed text of §348.204 consist of a grammatical correction.

Changes to the proposed text of §348.208 consist of changing "advanced practice nurse" to "advanced practice registered nurse."

Changes to the proposed text of §348.214 consist of clarifying that the rated capacity of the JJAEP is determined by the *appropriate fire authority* (rather than the local fire marshal).

Changes to the proposed text of §348.400 consist of clarifying that, if a JJAEP will need a waiver of the required number of school days because its calendar does not meet the requirements of Section 37.011(f), Education Code, TJJD will not release funds to the JJAEP until the waiver application is *approved* by TJJD (rather than received by TJJD).

JUSTIFICATION FOR CHANGES

The public benefit anticipated as a result of administering this new chapter is the promotion of successful youth outcomes and the availability of clarified and up-to-date rules.

SECTION-BY-SECTION SUMMARY

New §348.100 modifies and republishes information previously found in §348.100. The new section establishes the overall purpose of the chapter. Changes in the new section include only minor, non-substantive wording changes.

New §348.102 modifies and republishes information previously found in §348.102. The new section provides definitions for terms used in the chapter. Changes in the new section include: (1) adding definitions for Community Activities Officer, JJAEP Administrator, JJAEP Electronic Data Interchange Extract, Juvenile Probation Department, Juvenile Probation Officer, Juvenile Supervision Officer, Sending School District, and TJJD; (2) deleting definitions for Commission and Exit Reason; (3) clarifying that the term Intensive Physical Activity does not include activities required as part of a physical education class; and (4) clarifying that Chapter 37, Education Code, is the sole authorizing source for determining who is eligible to be served by a juvenile justice alternative education program (JJAEP).

New §348.104 modifies and republishes information previously found in §348.101. The new section establishes which programs are covered by this chapter and general rules for interpreting the chapter. Changes in the new section include: (1) specifying that this chapter applies to all JJAEPs operated under Section 37.011, Education Code, regardless of whether the JJAEP receives funds from TJJD for operating the JJAEP; (2) clarifying that the words "including" and "includes" mean that a non-exhaustive list will follow; (3) deleting the paragraph about use of headings; (4) removing redundant information relating to the expectation that a JJAEP must be operated in accordance with its policies and procedures; (5) removing the statement that indicated TJJD may publish a compliance resource manual to establish required guidelines, procedures, and documentation to ensure compliance with this chapter; (6) adding a requirement stating that any JJAEP policies and procedures required by this chapter must be adopted by the juvenile board; (7) adding that any requirement in this chapter to notify a student's parent, guardian, or custodian applies only if the student is under age 18 or if any of several exceptions apply to youth age 18 or older; and (8) adding that any notifications provided to a parent, guardian, or custodian without the written consent of a student who is age 18 or older must also be provided to the student.

New §348.106 modifies and republishes information previously found in §348.138. The new section addresses applying for a waiver or variance for any standard in this chapter. Changes in the new section include only minor, non-substantive wording changes.

New §348.200 modifies and republishes information previously found in §348.104. The new section establishes the duties of the JJAEP relating to operational policies, research studies, performance reviews, and staffing. The following paragraphs describe changes in the new section.

Changes relating to policies and procedures include: (1) adding a requirement for the JJAEP to submit its policies and procedures to TJJD for review no later than October 1 of each year and also upon request from TJJD; and (2) clarifying that the requirement for policies to be available to all staff applies to *all JJAEP policies,* not just to personnel-related policies (this provision, relating to policy access, was moved from former §348.106).

Changes relating to memorandums of understanding (MOU) include: (1) adding a requirement for the juvenile board to annually enter into an MOU with each participating school district; and (2) adding a requirement to submit the MOU to TJJD annually no later than October 1.

Changes relating to truancy and failure to attend include removing the requirement for the JJAEP to have written policies concerning truancy and failure to attend. A new section on reporting absences to the sending school district has been added to §348.210.

Changes relating to research studies include removing specific provisions relating to research programs and adding a requirement for the JJAEP to adhere to 37 TAC §341.200 as it relates to participation in research studies and experimentation. The provisions relating to research studies and experimentation were moved from former §348.106.

Changes relating to performance reviews include: (1) clarifying that the juvenile board and the JJAEP administrator must *conduct* (rather than participate in) an annual performance review; (2) adding that the performance review must be documented in a report that includes the data listed in this standard, an analysis of the program's effectiveness, and any changes implemented as a result of the review; and (3) adding that the report must be submitted to TJJD by October 1.

Additional changes relating to performance reviews include clarifying that the review must include:

(1) the number of and reasons for student entries and exits *during the previous school year;*

(2) the number of students *eligible for special education services* (rather than students with disabilities) *who entered the program during the previous school year;*

(3) student academic performance, *as measured by passing rates and, if applicable, half-credits earned for students who exited the program during the previous school year;*

(4) attendance rates *for the entire length of enrollment for students who exited the program during the previous school year;*

(5) assessment scores for mathematics and reading, *as measured by the TJJD-required pre-test and post-test scores, if applicable, for students who exited the program during the previous school year;*

(6) the number of new arrests or referrals during the entire length of enrollment for students who exited the program during the previous school year (rather than recidivism rates for students who exit); and

(7) the number of restraints *by type during the previous school year.*

Changes relating to management reviews include clarifying that one of the purposes of the JJAEP management review is for the JJAEP administrator to assess certain topics (i.e., safety and security, inter-local cooperation, and student code of conduct) and identify any needed changes.

Changes relating to the JJAEP administrator include clarifying that the bachelor's degree held by the JJAEP administrator must be from an institution that is accredited by an organization recognized by the Texas Higher Education Coordinating Board.

Changes relating to instructional staff include: (1) removing the requirement for instructional staff to hold a bachelor's degree; (2) adding that the only individuals who may count toward the instructional-staff-to-student ratio are teachers (must be certified, be highly qualified, or meet the teaching requirements of the organization providing education services), certified educational aides, and substitute teachers; (3) adding that substitute teachers who are not JJAEP staff members must be provided the JJAEP student code of conduct and policies that directly affect their duties and must sign an acknowledgment of receipt; and (4) removing the preferred ratio for instructional staff. The rule now provides only the required ratio, which is unchanged.

Changes relating to caseworkers include: (1) removing the preferred ratios for caseworkers. The rule now provides only the required ratio, which is unchanged; (2) clarifying that the provision allowing any "additional" caseworker to be present for less than a full day applies to only one caseworker (rather than to all caseworkers beyond the first one); and (3) clarifying that a substitute caseworker is required only when a caseworker is absent for more than three *consecutive* school days.

Changes relating to supervision staff include: (1) adding community activities officers and juvenile probation officers to the list of personnel who may be considered supervision staff; (2) removing caseworker aides from the list of personnel who may be considered supervision staff; and (3) adding that community activities officers who have received training in adolescent development and behavior, as well as juvenile probation officers, may participate in the administration of intensive physical activity (this is no longer limited to certified juvenile supervision officers [JSOs]); and (4) removing the provision that allowed optional JSO certification for county-employed staff who primarily supervise students. To correspond with recent changes in 37 TAC Chapter 341, the section now requires all JJAEP staff who may be required to supervise or transport students, whether employed by the county or not, to be certified by TJJD as a community activities officer unless the person holds another TJJD certification or is defined as a professional (e.g., teacher or educational aide).

Changes relating to operational staff include removing the preferred ratios. The rule now provides only the required ratio for operational staff, which is unchanged.

General changes to §348.200 include: (1) clarifying that electronic records are acceptable for documenting whether staff members are present or absent; (2) adding a reference to 37 TAC Chapter 355 for the definition of a mental health provider; and (3) moving certain provisions relating to the mission of the JJAEP from former §348.200 to this section. Clarified that the mission statement must be included in the JJAEP's policies and procedures manual *and* (rather than and/or) in the student code of conduct.

New §348.202 modifies and republishes information previously found in §348.106. The new section establishes requirements

for personnel records, new employee training, and criminal history checks. Changes in the new section include: (1) clarifying that the JJAEP administrator must *have access to* personnel files (rather than ensure files are maintained) for each person included in a program ratio; (2) removing all documents listed as required items (i.e., criminal history searches, training records, personnel actions, and education transcripts) in the personnel file, with the exception of documentation verifying that any required certifications are current; (3) adding a requirement for the JJAEP administrator to have access to documentation verifying that each person working at the JJAEP who is included in any program ratio has completed all training required by this chapter; (4) clarifying that the orientation training is required for any staff member *who is expected to work at the JJAEP for six weeks or longer;* (5) adding that documentation of orientation training must include the staff members' signatures on training sign-in sheets; (6) moving the provision relating to policy access to new §348.200; (7) removing the requirement for the JJAEP to maintain documentation of staff members' acknowledgment that they received the policies; (8) removing all requirements relating to criminal history searches, disqualifying criminal history, and criminal history records retention; and (9) adding that the criminal history and background check requirements and criminal history standards established by 37 TAC Chapter 344 apply to JJAEPs.

Additional changes included in §348.202 include several revisions to the topics that must be covered in orientation training, such as: (1) adding *serious incidents* to the topic that addresses identification and reporting of child abuse, neglect, and exploitation; (2) adding *procedures for reporting suicidal ideation or behavior* to the topic that addresses crisis intervention; and (3) removing the topic relating to sexual harassment.

New §348.204 modifies and republishes information previously found in §348.108. The new section identifies the types of data and source documentation JJAEPs are required to keep. Changes in the new section include: (1) removing the list of data elements the JJAEP must maintain; (2) adding a requirement that the JJAEP must maintain the data specified on the JJAEP Electronic Data Interchange (EDI) Specifications; (3) adding a requirement for TJJD to discuss with juvenile probation departments any proposed changes to the JJAEP EDI Specifications before any substantive changes are made; (4) adding that the required data must be entered into the juvenile probation department's automated case management system unless an alternate data entry system has been approved by TJJD; (5) specifying that the JJAEP EDI Extract must be submitted to TJJD *no later than the 10th calendar day of each month following the reporting period;* (6) adding a requirement for JJAEPs to submit the JJAEP Monthly Activity Report to TJJD no later than the 10th calendar day of each month via TJJD's Internet database; and (7) clarifying that the documentation required for each student includes the grade level *upon entry to the JJAEP.*

New §348.206 modifies and republishes information previously found in §348.110. The new section establishes the courses and areas of study required at JJAEPs. Changes in the new section include: (1) removing the list of recommended courses; and (2) clarifying that the purpose of the accelerated component of the instructional program is to support credit recovery at the high school level and to regain academic and social skills at the elementary and middle school levels.

New §348.208 modifies and republishes information previously found in §348.112. The new section establishes requirements for programming not directly related to the curriculum. Changes in the new section include: (1) clarifying that the JJAEP *collaborates with the sending school district* to ensure that appropriate special education services and English as a second language services are provided to eligible students; (2) adding that the JJAEP must maintain the most recent full and complete admission, review, and dismissal (ARD) meeting paperwork, the manifestation determination ARD meeting paperwork, and the most recent evaluation of special education eligibility; (3) adding that the JJAEP must maintain documentation of language proficiency assessment committee determinations; (4) adding a section requiring the JJAEP to provide appropriate services to students eligible for services under Section 504 of the Rehabilitation Act and to maintain documentation of Section 504 eligibility determinations; (5) moving the section relating to testing safeguards from former §348.204 to this section; (6) adding that the policies relating to testing safeguards must address confidentiality of test results, a prohibition on *making* copies (rather than just releasing copies) of the test, and a prohibition on unauthorized persons receiving electronic or hard copy test results; and (7) adding a requirement for the JJAEP to adhere to all standardized testing protocols required by the Texas Education Agency.

Additional changes within §348.208 include: (1) moving the requirement related to administration of the TJJD-selected pre- and post-test in reading and math from former §348.202 to this section; (2) changing the pre- and post-test requirement such that it will now apply to students who will be enrolled in the JJAEP for at least 75 days (rather than 90 days); (3) specifying that the post-test must be administered no sooner than 60 days after enrollment; (4) removing the requirement for scores on each section of the GED exam to be certified by a GED examiner; (5) adding that if a parent refuses to sign the authorization to consent to medical treatment, the JJAEP must maintain documentation indicating the refusal; (6) adding that the policies addressing extreme weather at JJAEPs with intensive physical activity programs must be written and must address humidity level, along with temperature, in determining when outside activity is not allowed; (7) changing "registered nurse" to "advanced practice registered nurse" in the list of medical professionals who are authorized to conduct pre-participation physical evaluations; and (8) clarifying that pre-participation exam documentation may indicate that a student has a condition that limits, but does not prohibit, participation in intensive physical activity and that the JJAEP must adhere to any such limitations.

New §348.210 modifies and republishes information previously found in §348.114. The new section establishes requirements relating to a student's status as present or absent. Changes in the new section include: (1) clarifying that a student's withdrawal date cannot be a date on which the student was present; (2) clarifying that the requirement for a student to be present for at least four hours to qualify as an attendance day *applies during the regular school year;* (3) clarifying that a student must be placed on inactive status when admitted to juvenile detention *but only if the student is not permitted to attend the JJAEP;* (4) clarifying that absences due to an illness or other medical reason are to be counted as inactive status *if the student is absent for four consecutive school days, although the date the inactive status begins is the first date the student was absent, if supported by verification documentation;* (5) adding that documentation verifying an absence due to illness or other medical reasons may be provided by an advanced practice registered nurse (in addition to physicians and physician assistants); (6) clarifying that when a student is absent for at least 10 consecutive school days, the

student is placed on inactive status *even if the 10 days roll over to the start of the next semester attended by the student;* (7) clarifying that if documentation showing the start date of an event that qualifies as inactive status is not provided, inactive status may not begin until the 11th consecutive school day of absence; (8) clarifying that the requirement to withdraw a student after 30 consecutive days on inactive status applies *even if the 30 days roll over to the start of the next semester attended by the student;* and (9) adding a requirement for the JJAEP to have written policies that specify which staff member is responsible for reporting student absences to the home school, which must occur at least once per week.

New §348.212 modifies and republishes information previously found in §348.116. The new section describes information-sharing and cooperation with the school district, juvenile probation department, and parent/guardian/custodian. Changes in the new section include: (1) removing the requirement for the JJAEP to notify the parent, guardian, or custodian of a student's enrollment in a JJAEP; (2) clarifying that the requirement to notify the parent, guardian, or custodian of a youth's withdrawal from the JJAEP must be made prior to the withdrawal date unless that date is not known and that the requirement does not apply when the parent, guardian, or custodian withdraws his/her child; (3) clarifying that the exit transition plan must include all information regarding courses in progress or completed, current grades for ongoing courses, and number of attendance days and absent days; (4) removing the requirement for the exit transition plan to include academic and behavioral improvements and "information necessary for the student's continued success"; (5) adding a requirement for the JJAEP to maintain written verification that the exit transition plan was sent to the receiving school district; (6) adding a requirement to provide a copy of the exit transition plan to the student; (7) removing the requirement for the JJAEP to provide the receiving school district with "any other records" upon the student's transition back to that district; and (8) clarifying that the JJAEP must have policies that address the delivery of testing materials to and from the JJAEP only if the statewide assessment is administered on-site.

New §348.214 modifies and republishes information previously found in §348.118. The new section establishes basic requirements for complying with health and fire codes and providing adequate classroom space and fixtures. Changes in the new section include: (1) clarifying that the JJAEP must conform to all applicable federal, state, *and* (rather than and/or) local codes; and (2) adding that the JJAEP must maintain documentation of the rated capacity *for the entire building,* in addition to each classroom; (3) adding that all fixtures, including any emergency lighting, must be in working order; (4) adding that repairs must be made promptly to all furniture, equipment, and fixtures currently in use that are not in safe working order; and (5) adding that the classroom space and common areas must provide sufficient seating and desks or tables.

New §348.216 modifies and republishes information previously found in §348.120. The new section establishes requirements relating to safety/security, transportation, and emergencies. Changes in the new section include: (1) clarifying that policies must require appropriate auto liability insurance when staff members transport students in personal vehicles *only if such transportation is allowed;* (2) adding active shooter events to the list of emergency situations that must be addressed in the JJAEP's policies and procedures; (3) clarifying that at least two staff members who are certified in CPR and first aid must be *in close proximity to the students at all times when students are present at the JJAEP campus* (rather than on duty at all times); (4) adding that the JJAEP's policies must prohibit use of a locked room for disciplinary removals from the classroom; (5) adding that, if pat-down searches are used, they must be conducted by a staff member of the same *gender* (rather than sex) as the student *unless an exception is approved and documented by the JJAEP administrator;* (6) adding that anal and genital body cavity searches are prohibited; (7) clarifying that disciplinary reports must include the *discipline imposed, if any* (rather than the outcome); (8) specifying that disciplinary reports must be sent to the JJAEP administrator *no later than the next school day* (rather than within 24 hours or the next working day); and (9) removing the provisions relating to who may possess weapons within the JJAEP, which is primarily addressed by state law.

New §348.218 establishes that requirements relating to restraints as published in 37 TAC Chapter 341 apply to JJAEPs.

New §348.220 modifies and republishes information previously found in §348.132. The new section requires JJAEPs to follow other TJJD standards relating to serious incidents. Changes in the new section include clarifying that requirements relating to serious incidents are contained in 37 TAC Chapter 358 only (rather than in Chapters 358 and 350).

New §348.222 modifies and republishes information previously found in §348.134. The new section requires JJAEPs to follow other TJJD standards relating to abuse, neglect, and exploitation and requires JJAEPs to have a zero-tolerance policy regarding sexual abuse. Changes in the new section include: (1) clarifying that requirements relating to abuse, neglect, and exploitation are contained in 37 TAC Chapter 358 only (rather than in Chapters 358 and 350); and (2) specifying that that the zero-tolerance policies and practices of the JJAEP are concerning sexual abuse, *as defined in 37 TAC Chapter 358* (rather than in accordance with the Prison Rape Elimination Act of 2003).

New §348.224 modifies and republishes information previously found in §348.136. The new section establishes a requirement for adoption and annual review of the student code of conduct and lists the topics that must be addressed. Changes in the new section include: (1) adding that the student code of conduct must be adopted *annually* by the juvenile board; (2) adding that documentation must be sent to TJJD annually by October 1 verifying that the JJAEP administrator's review of the student code of conduct was completed; (3) clarifying that the student code of conduct must be *readily accessible to every JJAEP staff member* (rather than requiring staff to be provided a copy); (4) specifying that JJAEP staff members' annual acknowledgment of having read and understanding the student code of conduct *must occur no later than the first day of each school year;* (5) removing the requirement for disciplinary procedures to be carried out promptly; (6) specifying that the student code of conduct must describe prohibited conduct as minor or major violations and must list the corresponding consequences available for each violation; (7) specifying that the description of the disciplinary process must include safeguards designed to promote consistent application of the process; (8) clarifying that disciplinary removals from the classroom must be with staff supervision; (9) clarifying that the student code of conduct must include the due-process procedures used for issuing discipline; (10) adding *physical exercises imposed for intimidation* to the list of prohibited sanctions; (11) adding that physical exercise may not be used for discipline unless the JJAEP operates an intensive physical activity program and adheres to certain stated

conditions; and (12) specifying that information relating to the JJAEP's policy on sexual abuse must be included in the student code of conduct, which replaces a requirement to have policies and procedures regarding the Prison Rape Elimination Act.

Additional changes included within §348.224 include adding the following as items that must be stated in the student code of conduct: (1) which issues are grievable and not grievable; (2) the method(s) by which students may obtain and submit a grievance without the assistance or permission of staff; (3) retaliation by staff is prohibited; (4) the student will receive a written response within five school days; (5) the parent, guardian, or custodian will be provided a copy of a grievance and the response upon request; (6) the deadline for a student to submit an appeal, which must be no earlier than five school days after receiving the initial response; and (7) the student will receive a response within 10 school days after submitting an appeal.

New §348.300 modifies and republishes information previously found in §348.206. The new section requires TJJD to complete an assessment of JJAEP performance. Changes in the new section include: (1) clarifying that the performance assessment report is not limited to covering only mandatory JJAEPs (i.e., those that are required by law to operate); (2) adding that the performance assessment report addresses the factors identified in the most recent General Appropriations Act; (3) removing the specific list of factors to be addressed in the report; (4) adding that TJJD provides a copy of the report to each JJAEP administrator and each chief administrative officer; (5) specifying that the administrator of a mandatory JJAEP must provide a copy of the report to the juvenile board and to the *superintendent of each participating school district* (rather than the superintendent or the school board chairman); and (6) removing the requirement for the administrator at a mandatory JJAEP to provide a copy of the report to the regional education service center representing the area served by the JJAEP.

New §348.400 establishes basic requirements for TJJD to provide funding to JJAEPs.

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rulemaking actions.

SUBCHAPTER A. PURPOSE, DEFINITIONS, AND APPLICABILITY

37 TAC §§348.100, 348.102, 348.104, 348.106

STATUTORY AUTHORITY

The new sections are adopted under Section 221.002(a)(5), Human Resources Code, which requires TJJD to adopt reasonable rules that provide minimum standards for juvenile justice alternative education programs created under Section 37.011, Education Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. PROGRAM OPERATIONS

37 TAC §§348.200, 348.202, 348.204, 348.206, 348.208, 348.210, 348.212, 348.214, 348.216, 348.218, 348.220, 348.222, 348.224

STATUTORY AUTHORITY

The new sections are adopted under Section 221.002(a)(5), Human Resources Code, which requires TJJD to adopt reasonable rules that provide minimum standards for juvenile justice alternative education programs created under Section 37.011, Education Code.

§348.200. Program Administration and Organization.

(a) Mission of the JJAEP.

(1) Academically, the mission of the JJAEP shall be to enable students to perform at grade level.

(2) The mission statement must be located in the JJAEP's policies and procedures manual and in the student code of conduct.

(b) Policies and Procedures.

(1) The JJAEP must:

(A) have written policies and procedures that govern all aspects of the operation of the program, including personnel, administration, programming, training, and any other program requirement included in this chapter;

(B) be operated according to the written policies and procedures; and

(C) submit the written policies and procedures to TJJD for review and comment at the following times:

(i) no later than October 1 of each year; and

(ii) upon request from TJJD.

(2) The written policies and procedures must be readily accessible to every JJAEP staff member.

(c) Memorandum of Understanding.

(1) The juvenile board must annually enter into a memorandum of understanding with each participating school district. The memorandum of understanding must address the items listed in Section 37.011(k), Education Code.

(2) The memorandum of understanding must be submitted to TJJD annually no later than October 1.

(d) Research Studies and Experimentation. The JJAEP must adhere to requirements established by §341.200 of this title regarding research studies and experimentation involving students in JJAEPs.

(e) JJAEP Performance Review. The juvenile board and the JJAEP administrator must conduct an annual performance review of the JJAEP between the conclusion of the school year and the beginning of the next school year to determine the effectiveness of the program.

(1) The information reviewed must include:

(A) the number of student entries and exits during the previous school year;

(B) the reason for student entries and exits during the previous school year;

(C) the number of students who entered the program during the previous school year who were eligible for special education services;

(D) student academic performance as measured by passing rates and, if applicable, half-credits earned for students who exited the program during the previous school year;

(E) attendance rates for the entire length of enrollment for students who exited the program during the previous school year;

(F) assessment scores for mathematics and reading as measured by the TJJD-required pre-test and post-test scores, if applicable, for students who exited the program during the previous school year;

(G) the number of new arrests or referrals that occurred during the entire length of enrollment for students who exited the JJAEP during the previous school year; and

(H) the number of restraints by type (i.e., mechanical or personal) during the previous school year.

(2) A written report must be completed that includes the data listed in paragraph (1) of this subsection, an analysis of the JJAEP's effectiveness, and any changes to be implemented as a result of the review.

(3) The report must be submitted to TJJD no later than October 1.

(f) JJAEP Management Review. The JJAEP administrator must conduct an annual review of the overall operations of the JJAEP before the beginning of each school year.

(1) The review must include an assessment of the following topics and identify any needed changes:

(A) safety and security;

(B) inter-local cooperation; and

(C) the student code of conduct.

(2) Existing policies and procedures must be reviewed and assessed to determine their continued relevance to the mission of the JJAEP.

(3) Documentation of the review must be maintained.

(g) Required Staff Members.

(1) JJAEP Administrator. The juvenile board or chief juvenile probation officer must designate a JJAEP administrator. The JJAEP administrator must:

(A) hold a bachelor's degree from a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board;

(B) possess juvenile justice experience and/or education experience;

(C) ensure compliance with all applicable laws and rules related to JJAEPs; and

(D) ensure compliance with provisions of all contracts with TJJD related to JJAEPs.

(2) Instructional Staff Members.

(A) The JJAEP must maintain a ratio of at least one instructional staff member for every 24 enrolled students. Instructional staff members include only:

(i) teachers who are certified, are highly qualified, and/or meet the teaching requirements of the organization providing education services at the JJAEP;

(ii) certified educational aides; and

(iii) substitute teachers.

(B) The instructional staff members for the JJAEP must include at least one teacher certified by the State Board for Education Certification (SBEC).

(C) The JJAEP must provide at least the minimum number of special education teachers required by federal law.

(D) A special education teacher must be certified as a special education teacher by SBEC or be eligible to work as a special education teacher prior to obtaining certification, as allowed by SBEC.

(E) Upon entry into the JJAEP, substitute teachers who are not JJAEP staff members must be provided the JJAEP student code of conduct and JJAEP policies and procedures that directly affect their duties and sign an acknowledgment of receipt.

(3) Caseworkers.

(A) A caseworker must be a social worker, juvenile probation officer assigned to the JJAEP, counselor, or other mental health provider, as defined in Chapter 355 of this title.

(B) Caseworkers must meet the minimum professional requirements and be licensed or certified by the appropriate licensing board in their field.

(C) The JJAEP must maintain a ratio of at least one caseworker for every 50 enrolled students.

(i) At a JJAEP with 50 or fewer enrolled students, the caseworker must be present during all operational hours of the JJAEP, except as noted in clauses (vi) and (vii) of this subparagraph.

(ii) At a JJAEP with 51-100 enrolled students, one caseworker must be present during all operational hours of the JJAEP, except as noted in clauses (vi) and (vii) of this subparagraph. The second caseworker must be present for at least four of the JJAEP's daily operational hours, except as noted in clauses (vi) and (vii) of this subparagraph.

(iii) At a JJAEP with 101-150 enrolled students, two caseworkers must be present during all operational hours of the JJAEP, except as noted in clauses (vi) and (vii) of this subparagraph. The third caseworker must be present for at least four of the JJAEP's daily operational hours, except as noted in clauses (vi) and (vii) of this subparagraph.

(iv) At a JJAEP with 151-200 enrolled students, three caseworkers must be present during all operational hours of the JJAEP, except as noted in clauses (vi) and (vii) of this subparagraph. The fourth caseworker must be present for at least four of the JJAEP's daily operational hours, except as noted in clauses (vi) and (vii) of this subparagraph.

(v) At a JJAEP with more than 200 enrolled students, the number of caseworkers required to be present during all operational hours of the JJAEP follows the same pattern set forth in clauses (i) - (iv) of this subparagraph.

(vi) A substitute caseworker is not required when a caseworker is absent for three or fewer consecutive school days. A

substitute caseworker is required if an absence is more than three consecutive school days.

(vii) A caseworker who must leave the JJAEP site to complete a JJAEP-related duty is considered present for purposes of calculating the ratio.

(4) Supervision Staff Members.

(A) The JJAEP must ensure an adequate number of supervision staff members are present during all operational hours.

(B) Supervision staff members include drill instructors, educational aides, security personnel, juvenile supervision officers, juvenile probation officers, community activities officers, and behavior management staff.

(C) Any staff member, excluding a certified physical education teacher, who participates in the administration of intensive physical activity must be a:

(i) juvenile supervision officer;

(ii) juvenile probation officer; or

(iii) community activities officer who has received training in adolescent development and behavior, as required by §341.402 of this title.

(D) Except for professionals as defined in §344.100 of this title who are providing services in their professional capacity, any staff member whose position may require supervising or transporting JJAEP students must be:

(i) certified by TJJD as a juvenile probation officer, juvenile supervision officer, or community activities officer; or

(ii) otherwise authorized to perform the duties of a certified juvenile probation officer, community activities officer, or juvenile supervision officer under §§341.400, 341.402, 343.428, 343.622, or 355.428 of this title, as applicable.

(5) Operational Staff Members.

(A) Operational staff members include instructional staff members, supervision staff members, caseworkers, and JJAEP administrators.

(B) The JJAEP must maintain a ratio of at least one operational staff member for every 12 enrolled students.

(h) Verification Documentation.

(1) The JJAEP must maintain a daily staff member roster, staff sign-in sheet, or other verification document that identifies each of the operational staff members who are present in the JJAEP each day.

(2) The staff member roster, sign-in sheet, or other verification document must include the date, the time of entry and exit, the staff member's full name, and the staff member's position or title. Electronic records are acceptable for documenting whether staff members are present or absent.

§348.204. Data Collection and Case File Information.

(a) Data Collection and Reporting.

(1) JJAEP EDI Extract.

(A) Unless an alternate data entry system has been approved by TJJD, the JJAEP administrator or designee must ensure that:

(i) statistical and programmatic data for each student, as required by the JJAEP Electronic Data Interchange (EDI) Specifications, are accurately documented and entered into the juvenile probation department's automated case management system; and

(ii) the JJAEP EDI Extract is submitted to TJJD no later than the 10th calendar day of each month following the reporting period.

(B) TJJD staff must discuss any proposed changes to the JJAEP EDI Specifications with juvenile probation departments' designated representatives before making substantive changes to the specifications.

(2) JJAEP Monthly Activity Report. The JJAEP administrator or designee must ensure the JJAEP Monthly Activity Report is submitted in the required format to TJJD no later than the 10th calendar day of each month following the reporting period via TJJD's Internet database.

(b) Student Educational Records. The following information must be documented and maintained in the case file for each student in the program:

(1) grade level upon entry to the JJAEP;

(2) notice of expulsion;

(3) court order(s) placing the student into the JJAEP;

(4) police offense report, if applicable;

(5) entry and exit transition plans;

(6) education records, to include:

(A) special education determination;

(B) appropriate special education records;

(C) scores on assessments required by the Texas Education Agency; and

(D) home-language survey;

(7) admission and exit testing data, if applicable;

(8) pre-participation physical evaluation, if required under §348.208 of this title;

(9) documentation of regular reviews of academic progress as required by Section 37.011(d), Education Code;

(10) date of admission;

(11) number of attendance days;

(12) number of absent days;

(13) date of release;

(14) emergency notification contacts;

(15) special medical needs, if any;

(16) immunization records; and

(17) medical release form.

§348.208. Program Requirements.

(a) Special Education.

(1) The JJAEP, in collaboration with the sending school district, must ensure that a student with a disability who receives special education services is provided educational services that will support the student in meeting the goals identified in the individualized education program established by a duly constituted admission, review, and dismissal (ARD) committee, in accordance with Section 37.004, Education Code, and federal requirements.

(2) The following ARD committee documentation must be maintained for each special education eligible student:

(A) the most recent full and complete ARD meeting paperwork;

(B) the manifestation determination ARD meeting paperwork; and

(C) the most recent evaluation of eligibility for special education services.

(b) English as a Second Language (ESL).

(1) The JJAEP, in collaboration with the sending school district, must ensure that a student who is non-English speaking or who speaks English as a second language is provided ESL services and instruction appropriate to address his or her needs, as determined by a language proficiency assessment committee (LPAC).

(2) Documentation of LPAC determinations must be maintained.

(c) Section-504-Eligible Students.

(1) The JJAEP must ensure, in collaboration with the sending school district, that a student who is eligible for services under Section 504 of the Rehabilitation Act of 1973 is provided services and instruction appropriate to address his or her needs, as determined by a Section 504 committee.

(2) Documentation of Section 504 eligibility determinations must be maintained.

(d) Standardized Testing Protocols.

(1) JJAEP policies and procedures must describe the safeguards the JJAEP will use to maintain the integrity of the standardized testing process and confidentiality of test results.

(2) JJAEP policies and procedures must include the following requirements:

(A) tests must be maintained in a secure setting (e.g., a locked file cabinet) so that staff and students do not have access to the test except while the test is being administered;

(B) staff are prohibited from making copies of the test;

(C) staff are prohibited from teaching the specific questions on the test; and

(D) unauthorized persons are prohibited from receiving test results, whether hard copy or electronic.

(3) For statewide standardized tests, the JJAEP must adhere to all testing protocols required by the Texas Education Agency.

(4) The JJAEP must administer the standardized test selected by TJJD to measure progress in reading and mathematics for students who will be enrolled in the JJAEP for at least 75 school days.

(A) The pre-test must be administered within 15 days after the student's enrollment.

(B) The post-test must be administered no sooner than 60 days after the student's enrollment.

(e) Counseling. Counseling services (individual or group) must be available to all students in attendance at the JJAEP.

(f) Meals.

(1) Written policies and procedures must require that each student in attendance at the JJAEP is provided a lunch meal on each school day.

(2) A student may not be denied a lunch meal as a disciplinary measure.

(g) Medical.

(1) Authorization to Consent to Treatment. The JJAEP must have on file for each student:

(A) an authorization to consent to medical treatment in accordance with Section 32.001, Family Code, signed by the student's parent, guardian, or custodian; or

(B) documentation indicating the parent, guardian, or custodian has refused to sign.

(2) Medication Administration. The JJAEP must have written policies and procedures governing the administration of medication to students. The policies and procedures must:

(A) specify which personnel are authorized to dispense medication to students;

(B) identify requirements for the storage, use, and distribution of all medication provided to students;

(C) require the student's parent, guardian, or custodian to provide a written request for the administration of the medication;

(D) specify that the JJAEP will not accept medication unless it is in the original, properly labeled container; and

(E) require that distribution of all medication be documented, including the date/time administered, name of the person who administered, student's name, type of medication, and dosage.

(h) Programs that Include Intensive Physical Activity.

(1) Weather-Related Policies. A JJAEP that has an intensive physical activity component must develop written policies and procedures regarding extreme weather conditions. These policies and procedures must address the following:

(A) gradual acclimatization to hot weather;

(B) student clothing for various weather conditions;

(C) specific criteria for temperature and humidity level and other weather conditions that indicate when outside activity is not allowed; and

(D) the provision of a water break to students at least once every 30 minutes during the intensive physical activity period.

(2) Pre-Participation Physical Evaluation.

(A) A student may not participate in intensive physical activity unless the student has received a pre-participation physical evaluation performed by a Texas-licensed:

(i) physician;

(ii) physician assistant;

(iii) advanced practice registered nurse; or

(iv) doctor of chiropractic.

(B) The pre-participation physical evaluation must have been completed within one calendar year prior to the student's participation in intensive physical activity.

(C) The pre-participation physical evaluation must indicate whether or not the student has any temporary or permanent physical limitations or conditions that would limit or prohibit participation in intensive physical activity.

(D) The JJAEP must adhere to the limitations or prohibitions noted in the pre-participation physical evaluation report.

§348.214. Physical Plant.

(a) The JJAEP must conform to all applicable federal, state, and local ordinances and codes. Each JJAEP must have on file the most recent inspections (i.e., health and fire) conducted by the local governmental authority having jurisdiction.

(b) The number of occupants in the JJAEP may not exceed the rated capacity as determined by the appropriate fire authority. The JJAEP must maintain documentation from the appropriate fire authority for the rated capacity of each classroom and for the entire building.

(c) The classroom space and common areas must be adequate to meet the programmatic requirements for each student enrolled and in attendance in the JJAEP, including sufficient seating and desks or tables.

(d) All fixtures, including any emergency lighting, must be in working order.

(e) Repairs must be made promptly to all furniture, equipment, and fixtures currently in use that are not in safe working order.

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 April 9, 2018.

TRD-201801526
Jill Mata
General Counsel
Texas Juvenile Justice Department
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Proposal publication date: February 2, 2018
For further information, please call: (512) 490-7014

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SUBCHAPTER C. ACCOUNTABILITY

37 TAC §348.300

STATUTORY AUTHORITY

The new section is adopted under Section 221.002(a)(5), Human Resources Code, which requires TJJD to adopt reasonable rules that provide minimum standards for juvenile justice alternative education programs created under Section 37.011, Education Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. FUNDING

37 TAC §348.400

STATUTORY AUTHORITY

The new section is adopted under Section 221.002(a)(5), Human Resources Code, which requires TJJD to adopt reasonable rules that provide minimum standards for juvenile justice alternative education programs created under Section 37.011, Education Code. The new section is also adopted under Section 37.011(h), Education Code, which requires TJJD to adopt rules for the distribution of funds appropriated under this section to juvenile boards in counties required to establish JJAEPs.

§348.400. Funding for JJAEPs.

(a) Funding for JJAEPs is provided in accordance with requirements in the General Appropriations Act.

(b) TJJD will not release funds to a JJAEP until it has received the following:

(1) memorandum of understanding with completed signature page(s), as required by §348.200 of this title;

(2) student code of conduct for the current school year; and

(3) school calendar.

(c) TJJD will not release funds to a JJAEP whose school calendar is not in compliance with Section 37.011(f), Education Code, unless an application for a waiver has been approved by TJJD.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

SUBCHAPTER A. ADMISSION, PLACEMENT, RELEASE, AND DISCHARGE

DIVISION 6. PAROLE AND DISCHARGE

37 TAC §380.8595

The Texas Juvenile Justice Department (TJJD) adopts amendments to §380.8595, concerning Parole Completion and Discharge, without changes to the proposed text as published in the February 23, 2018, issue of the *Texas Register* (43 TexReg 1031).

JUSTIFICATION FOR CHANGES

The public benefit anticipated as a result of administering the section is to move the agency toward best practices in supervision and discharge of youth on parole.

SUMMARY OF CHANGES

The amended rule will clarify that youth may qualify for discharge upon completing 60 hours of approved community service while on parole status or while assigned to a medium-restriction facility.

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rulemaking action.

STATUTORY AUTHORITY

The amended section is adopted under Section 242.003, Human Resources Code, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs; and Section 245.001, Human Resources Code, which authorizes TJJD to employ parole officers to investigate, place, supervise, and direct the activities of a parolee to ensure the parolee's adjustment to society in accordance with the rules adopted by the TJJD Board.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 10, 2018.

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Jill Mata
General Counsel
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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.

Adopted Rule Reviews

Public Utility Commission of Texas

Title 16, Part 2

The Public Utility Commission of Texas (commission) readopts the Chapter 25, Substantive Rules Applicable to Electric Service Providers pursuant to the Administrative Procedure Act (APA), Texas Government Code §2001.039, Agency Review of Existing Rules. The notice of intention to review Chapter 25 was published in the *Texas Register* on December 1, 2017 (42 TexReg 6821).

APA §2001.039 requires that each state agency review its rules every four years and readopt, readopt with amendments, or repeal the rules adopted by that agency pursuant to the Texas Government Code, Chapter 2001. Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rules continues to exist. The commission has completed the review of the rules in Chapter 25 pursuant to APA §2001.039 and finds that the reasons for adopting the rules in Chapter 25 continue to exist.

The commission requested specific comments on whether the reasons for adopting the rules in Chapter 25 continue to exist. The commission received comments on the notice of intention to review from the Electric Reliability Council of Texas, Inc. (ERCOT), the Retail Electric Provider Coalition (the REP Coalition), the Southwestern Public Service Company (SPS), and CenterPoint Energy Houston Electric, LLC (CenterPoint). All comments, including any not specifically referenced herein, were fully considered by the commission.

Summary of Comments

General Comments

ERCOT stated its belief that the justifications for the majority of rules that apply to ERCOT continue to exist and that those rules should be readopted. ERCOT also stated that it believes some rules no longer appear to be either necessary or effective. ERCOT recommended that the commission consider amending or repealing certain provisions and asked the commission to revisit its comments from the commission's previous review of Chapter 25.

SPS stated that the existing rules in Chapter 25 still apply to today's electric market but provided comments on specific provisions to the code, which are addressed in the subsequent section below, Comments on Specific Provisions.

The REP Coalition stated that it had provided previous comments during past commission reviews of Chapter 25 and asked that those proposals that have not yet had action taken on them be considered.

The commission finds that the rules in Chapter 25 continue to be necessary and readopts the Chapter in its entirety. Specific suggestions for modification, addition, or deletion of provisions in Chapter 25 that the commission determines have merit may be considered in future projects or rulemakings as resources and commission priorities permit. The commission readopts Chapter 25.

Comments on Specific Provisions

Section 25.27. Retail Electric Service Switchovers.

In order to clarify that customers have the right to switch electric delivery service to any Transmission and Distribution Utility (TDU) that has the right to provide service in the area that the customer's consuming facilities are located, the REP Coalition reiterated their proposal made in Project No. 41937 that §25.27 be amended to include a subsection relating to "Applicability" to explicitly indicate that electric switchovers are applicable in areas served by TDUs. To support their proposal, the REP Coalition referred to §25.21(a), which provides that "(u)nless the context clearly indicates otherwise, in this subchapter the term "electric utility" applies to all electric utilities that provide retail electric utility service in Texas."

Commission Response

The commission acknowledges that the proposal may have merit and will consider it in connection with other projects to amend rules in Chapter 25, as resources and priorities permit. The commission readopts this section.

Section 25.30. Complaints.

The REP Coalition reiterated their recommendation made in Project No. 41937 that a clarifying sentence should be added to §25.30 to explicitly include TDUs within the scope of the rule. To support their recommendation, the REP Coalition referred to §25.21(a), which provides that "(u)nless the context clearly indicates otherwise, the term "electric utility" applies to all electric utilities that provide retail electric utility service in Texas."

Commission Response

The commission acknowledges that the proposal may have merit and will consider it in connection with other projects to amend rules in Chapter 25, as resources and priorities permit. The commission readopts this section.

Section 25.43. Provider of Last Resort (POLR).

ERCOT stated that the current rule in §25.43(s)(l) requires ERCOT to notify a customer transitioned to POLR by sending the customer a secured mailer and, if ERCOT has the customer's phone number and email address, by making an automated phone call and sending an

email. ERCOT recommended amending the rule to allow ERCOT to notify customers transitioned to POLR via an automated phone call and email if ERCOT has that information. A secured mailer would only be required if the customer's phone number and email are not available. ERCOT noted that a phone call and email may be more effective than a secured mailer given the speed with which a mass transition occurs. This amendment would ultimately reduce costs for ERCOT and ultimately for customers.

Commission Response

The commission acknowledges the comments made by ERCOT may have merit and may be considered in connection with other projects to amend rules in Chapter 25, as resources and priorities permit. The commission readopts this section.

Section 25.88. Retail Market Performance Measure Reporting.

ERCOT proposed a holistic review of the retail performance measure reporting requirements and the ERCOT protocols. ERCOT stated that doing so would allow the commission and stakeholders to review the retail reporting requirements and adapt them in the context of today's retail market.

Commission Response

The commission acknowledges that the comments made by ERCOT may have merit and may be considered in connection with other projects to amend rules in Chapter 25, as resources and priorities permit. The commission readopts this section.

Section 25.90. Market Power Mitigation Plans.

The REP Coalition commented that the rule reference to December 1, 2000 has expired and should be removed.

Commission Response

The commission acknowledges the obsolete reference in the rule and may revise the rule as resources and priorities permit. The commission readopts this section.

Section 25.101. Certification Criteria.

ERCOT stated that while commission Rules and ERCOT Protocols and Planning Guides contemplate that transmission projects can be justified under either economic or reliability criteria, long-established planning practices in the ERCOT region do not consider the tendency of a project to facilitate wholesale competition when determining whether a need exists under reliability criteria. ERCOT suggested amending subsection (b)(3)(A)(ii) to strike the phrase "and to facilitate robust wholesale competition" to make the planning criteria employed by the commission and by ERCOT consistent with one another.

Commission Response

The commission acknowledges the comments made by ERCOT may have merit and may be considered in connection with other projects to amend rules in Chapter 25, as resources and priorities permit. The commission readopts this section.

Section 25.131. Load Profiling and Load Research.

ERCOT proposed deleting §25.131(e)(2) and (3) because the load profile and cost recovery processes have not been used to date and, with the deployment of advanced meters, it is unlikely that the process will be used in the future.

Commission Response

The commission acknowledges that the comments made by ERCOT may have merit and will be considered in connection with other projects to amend rules in Chapter 25, as resources and priorities permit. The commission readopts this section.

Section 25.174. Competitive Renewable Energy Zones.

The REP Coalition commented that the rule requires ERCOT to provide a study on wind energy production potential by December 1, 2006. The REP Coalition suggested that since the date has passed, the rule should be reviewed to remove the date.

Commission Response

The commission acknowledges that the date for the study has passed, and may consider revising the rule in connection with other projects to amend rules in Chapter 25, as resources and priorities permit. The commission readopts this section.

Section 25.214. Terms and Condition of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities.

The REP coalition proposes that §25.214 be changed to include a section that requires TDUs to post rate changes for all tariffed rates in a repository of the commission's design. The reason given for this proposed change is that it is difficult for customers to decipher the timing, applicability, and authority for these rate changes from any public source, and that retail electric providers (REPs) expend significant resources to track rate changes.

Commission Response

The commission finds that the current presentation of rates within a tariff manual is sufficient for customers to determine applicable rates. Furthermore, while the REP Coalition's goal of minimizing resources expended to track changes in rates is laudable, their proposal would shift those resource requirements onto the commission and TDUs. Finally, the proposed change is outside the scope of review for this proceeding, as there have been no changes to the reason for the adoption of §25.214. The commission readopts this section.

Section 25.215. Terms and Conditions of Access by a Competitive Retailer to the Delivery System of a Municipally Owned Utility or Electric Cooperative that has Implemented Customer Choice.

In order to ensure consistency with the retail delivery tariff for investor-owned TDUs in ERCOT, the REP Coalition reiterated their recommendation made in Project No. 41937 to review the retail delivery tariff applicable to MOUs and Electric Cooperatives where customer choice has been implemented. The REP Coalition noted that while §25.214, which relates to terms and conditions of retail delivery service provided by investor owned TDUs, has been periodically reviewed since the market opened to competition, §25.215 has not been reviewed since 2001.

Commission Response

The commission recognizes that such a review may be warranted and will consider amending the retail delivery tariff in §25.215 in connection with other projects to amend rules in Chapter 25, as resources and priorities permit. The commission readopts this section.

Section 25.246. Rate Filing Standards and Procedures for Non-ERCOT Utilities.

Although not proposing any specific changes to §25.246, SPS suggested that the rate filing package (RFP) for investor owned utilities be revised to reflect 2015 legislative changes from HB 1535. SPS pointed out that there are several references to the RFP in §25.246 and that Project No. 39547 (Project to Revise Rate Filing Package for Vertically Integrated Utilities) has already been established to address revisions to the RFP. SPS proposed that the RFP be revised in various places to

include provisions for the election by the utility to use an Updated Test Year pursuant to Public Utility Regulatory Act §36.112(b)(2).

Commission Response

The commission recognizes that changes to the rate filing package for vertically integrated utilities may be warranted and will consider revising it as resources and priorities permit.

Section 25.261. Stranded Cost Recovery of Environmental Cleanup Costs.

The REP Coalition commented that the date for the electric utility or affiliated power generation company to file an application under subsection (e) was on or before January 10, 2003. The REP Coalition recommended repeal or revision of the section.

Commission Response

The commission acknowledges that the date for filing an application under §25.261(e) has passed, and may consider repealing or revising the rule in connection with other projects to amend rules in Chapter 25, as resources and priorities permit. The commission readopts this section.

Section 25.263. True-up Proceeding.

The REP Coalition commented that dates in this rule for filing true up applications have passed and recommended revision accordingly.

Commission Response

The commission may consider revising the rule in connection with other projects to amend rules in Chapter 25, as resources and priorities permit. The commission readopts this section.

Section 25.271. Foreign Utility Company Ownership by Exempt Holding Companies.

The REP Coalition stated that in the order re-adopting §25.271 in 2006, the commission stated it would initiate a separate rulemaking project to address issues raised by some commenters regarding the repeal of the Public Utility Holding Company Act of 1935, and the adoption of the Public Utility Company Holding Act of 2005. The REP Coalition stated that this rule remains unchanged as of the last review proceeding, in which the commission again acknowledged the outdated references in the rule.

Commission Response

The REP Coalition's suggestion may have merit and may be considered in connection with other projects to amend rules in Chapter 25, as resources and priorities permit. The commission readopts this section.

Section 25.272. Code of Conduct for Electric Utilities and Their Affiliates.

The REP Coalition recommended that §25.272(i)(1) be deleted because the rule required each utility to implement an internal code of conduct during the transition to competition and that applicable timeframe has passed. The commission has approved permanent codes of conduct for each affected utility.

Commission Response

The commission acknowledges that the applicable timeframe for interim codes of conduct has passed. The commission may consider the REP Coalition recommendation to delete the subsection in connection with other projects to Amend Chapter 25, as resources and priorities permit. The commission readopts this section.

Section 25.273. Contracts between Electric Utilities and their Competitive Affiliates.

The REP Coalition stated that §25.273(b) of this rule refers to "affiliates" as that term is defined in PURA §11.003(2) and that since the adoption of this rule in 1999, the Texas Legislature has enacted PURA §11.0042, a provision which defines "affiliate" and exempts certain persons and corporations from the definition of affiliate in PURA §11.003(2). The REP Coalition recommended that §25.273(b) be amended to add a reference to PURA §11.0042.

Commission Response

The REP Coalition's suggestion may have merit and may be considered in connection with other projects to amend rules in Chapter 25, as resources and priorities permit. The commission readopts this section.

Section 25.311. Competitive Metering Services.

ERCOT commented that §25.311(b)(1) has not been updated to include additional language consistent with HB 2129 from the 2005 legislative session to limit the availability of competitive metering to the commercial and industrial customers that are required by the independent system operator to have an interval data recorder.

Commission Response

The commission acknowledges that the suggestions by ERCOT may have merit and will be considered in connection with other projects to amend rules in Chapter 25, as resources and priorities permit. The commission readopts this section.

Section 25.361. Electric Reliability Council of Texas (ERCOT).

ERCOT discussed the section's language regarding ERCOT's obligation to maintain the confidentiality of sensitive information and other protected information "as specified in §25.362." ERCOT stated that the existing language of this section suggests that greater detail concerning ERCOT's obligations regarding confidential obligation can be found in §25.362, but that part of §25.362 only addresses ERCOT's responsibilities in so far as simply prohibiting ERCOT from withholding information that is not designated as Protected Information pursuant to ERCOT rules. ERCOT stated that it believes this reference is unnecessary and may lead to confusion about ERCOT's obligation to protect confidential and sensitive information.

ERCOT also suggested replacing the word "protected" with "confidential" in §25.362(e), as there may be information not strictly considered "protected information" that the commission may wish ERCOT to withhold, citing "critical energy infrastructure information" as one such example. ERCOT stated that broadening the language to include other types of confidential information would eliminate confusion about its duties.

Commission Response

The commission acknowledges the comments of ERCOT and will consider the merit of revising the rule as resources and priorities permit. The commission readopts this section.

Section 25.361 Electric Reliability Council of Texas (ERCOT).

ERCOT stated that §25.361(d)(3) requires ERCOT to submit revisions and additions to planning guidelines prior to adoption, but that the regional planning group process has resulted in thousands of miles of transmission lines since its adoption in 2001. ERCOT stated that commission rules do not require that ERCOT file proposed changes to guidelines and procedures for any other topics prior to their adoption, and that a stakeholder could still challenge revisions to planning guidelines with an appeal to the commission under §22.251. ERCOT proposed striking language from subsection (d)(3) to remove the requirement that ERCOT submit to the commission any revisions or additions to planning guidelines and procedures prior to adoption, and specifying

that ERCOT may seek input from the commission on the content and implementation of its planning guidelines as deemed necessary.

Commission Response

The commission disagrees with ERCOT's proposal to delete the requirements of subsection (d)(3). ERCOT's planning guidelines are used in ERCOT's transmission planning process to identify new transmission facilities that are needed. The commission has a particular interest in ERCOT's identification of needed transmission facilities, because under Public Utility Regulatory Act, Chapter 37, Subchapter B, the commission must approve proposals for transmission facilities of many types.

Section 25.362. Electric Reliability Council of Texas (ERCOT) Governance.

ERCOT suggested changing §25.362(e)(1)(A), a provision that prohibits ERCOT from withholding information collected pursuant to ERCOT rules unless it is considered "Protected Information" under ERCOT's rules, by striking the protected information language and replacing it to include the broader language of information that is "confidential under ERCOT rules or other laws(.)" If such a change were adopted, ERCOT further suggested amending subsection (e)(1)(C) and subsection (e)(2) to substitute the more general term "confidential information" in place of the existing language of "Protected Information."

ERCOT further suggested changing the language of subsection (e)(1)(B) of §25.362, which requires ERCOT to "promptly respond" to a request for information from "the commission, a commissioner, a commissioner's designee, the commission executive director, or the executive director's designee(.)" ERCOT cited the difficulty of determining who is or is not a "designee" of a commissioner or of the executive director and suggested broadening the scope of this provision to allow ERCOT to provide information to any commission employee upon written request. ERCOT also proposed eliminating the condition that ERCOT's duty to disclose in this provision be triggered by information that is "necessary to carry out the commission's responsibilities for oversight of ERCOT and the wholesale and retail markets." ERCOT suggested that such requests for information should be presumed to be legitimate so long as the request comes from a commissioner or a commission employee ostensibly acting in his or her official capacity.

Finally, ERCOT noted that a 2014 amendment to §25.362 may have inadvertently removed language which previously required ERCOT to submit an annual report and prescribed the content of that report. ERCOT stated that it has continued to submit the report as previously required by the rule but that, if the commission believes the annual report should still be filed, that the commission should amend the rule to insert the previous requirement language to prevent confusion.

Commission Response

The commission acknowledges the comments of ERCOT and will consider the merit of revising the rule as resources and priorities permit. The commission readopts this section.

Section 25.471. General Provisions of Customer Projection Rules.

The REP Coalition proposed amending §25.471(c) to include "religion" in the list of prohibited bases for discrimination to provide consistency with PURA §39.101(a)(5).

Commission Response

The commission acknowledges the comments of the REP Coalition and may consider the merits of revising the rule as resources and priorities permit. The commission readopts this section.

Section 25.472. Privacy of Customer Information.

The REP Coalition recommended that §25.472(b)(1) be amended to change the cross-reference from §25.272(c)(5) to §25.5. Section 25.272(c)(5) limits "proprietary customer information" to information gathered by an electric utility, whereas §25.5 includes proprietary information gathered by REPs.

Commission Response

The commission acknowledges the comments of the REP Coalition and will consider the merits of revising the rule as resources and priorities permit. The commission readopts this section.

Section 25.474. Selection of Retail Electric Provider.

The REP Coalition recommended this section be amended to add "password" to the list of permissible account access verification data because in some instances it may be a customer-preferred form of authorization.

Additionally, the REP Coalition proposed clarifying the rule to permit REPs to verify customer account access without requiring full visibility of a customer's driver's license or government-issued identification if the REP so chooses. The list of permissible account access verification data should be amended to include the last four digits of a customer's driver's license or government-issued identification number.

Commission Response

The REP Coalition's suggestion may have merit and will be considered in connection with other projects to amend rules in Chapter 25, as resources and priorities permit. The commission readopts this section.

Section 25.478. Credit Requirements and Deposits.

The REP Coalition recommended that this section be amended to delete the obsolete referenced deadline of August 31, 2004 in §25.478(j)(1) for REPs to comply with refunding customer deposits after a certain number of consecutive billings without any late payments.

Commission Response

The commission acknowledges that the deadline has expired. The commission will consider the comments of the REP Coalition and the merits of revising the rule as resources and priorities permit. The commission readopts this section.

Section 25.479. Issuance and Format of Bills.

The REP Coalition recommended that this section be amended to delete §25.479(c)(1)(S), which requires REPs to include the phrase "for more information about residential service, please visit www.powertochoose.com" on the first page of residential customer bills. The REP Coalition stated that HB 1799 (adopted by the 81st Legislature) and PURA §39.116 unequivocally state that the requirement expired on September 1, 2011.

Additionally, the REP Coalition recommended that the commission amend §25.479(h) to state that the transfer of a customer's account balance between REPs would only apply to transfers between non-affiliated REPs. The current rule impedes customers from switching to an alternate product offered by a REP's affiliates that may be a better value for the customer. The current rule also acts as an impediment to the potential acquisition of a REP's book of customers when a REP wants to migrate the customers to their existing brand, as is often the case in defaults.

Commission Response

The REP Coalition's suggestion may have merit and may be considered in connection with other projects to amend rules in Chapter 25, as resources and priorities permit. The commission readopts this section.

Section 25.480. Bill Payment and Adjustments.

The REP Coalition recommended the rule be amended to add a refund process similar to the one for "prepaid" in §25.498(c)(7)(G)(ii), which (1) requires customers with account balances less than five dollars to be notified and (2) requires the customer to contact the REP to receive the refund of the balance before the refund is issued.

Commission Response

The commission acknowledges the comments of the REP Coalition and may consider the merits of revising the rule in connection with other projects to amend rules in Chapter 25, as resources and priorities permit. The commission readopts this section.

Section 25.483. Disconnection of Service; Section 25.497. Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers.

The REP Coalition recommended that the rule be amended to require a TDU to honor REP requests to disconnect critical care and chronic condition customers after proper notice has been provided by the REP and the safety of the customer has been certified. The REP Coalition stated that if a TDU repeatedly rejects valid disconnection requests for these customers, the TDU should assume financial responsibility for the customer. The REP Coalition further noted that §25.497(f) specifically states that critical care and chronic condition residential customers are not relieved of their obligation to pay for REP services and that a customer's service may be disconnected pursuant to §25.483.

CenterPoint opposed the REP Coalition recommendation, noting that a TDU must already "cease charging all transmission and distribution charges" to the REP if the TDU refuses to disconnect the REP's critical care customer.

Commission Response

The commission acknowledges the comments of the REP Coalition and CenterPoint and may consider the merits of revising the rule in connection with other projects to amend rules in Chapter 25, as resources and priorities permit. The commission readopts this section.

Section 25.487. Obligations Related to Move-In Transactions.

The REP Coalition recommended amending §25.487(d) to refer to ERCOT Nodal Protocols and Market Guides for process timelines, rather than specifying timelines in the rule.

Commission Response

The commission acknowledges the comments of the REP Coalition may have merit and may be considered in connection with other projects to amend rules in Chapter 25, as resources and priorities permit. The commission readopts this section.

Section 25.489. Treatment of Premises with No Retail Electric Provider of Record.

The REP Coalition recommended that the commission conduct a sunset review of the rule because the Move In, Move Out and safety net processes are working effectively.

Commission Response

The REP Coalition recommendation may have merit and will be considered in connection with other projects to amend and repeal rules in Chapter 25, as resources and priorities permit. The commission readopts this section.

Section 25.502. Pricing Safeguards in Markets Operated by the Electric Reliability Council of Texas.

ERCOT commented that the market has matured since adoption of §25.502(f), which requires ERCOT to submit initial protocols and subsequent protocol amendments to the commission for approval. ERCOT proposed changes to §25.502(f)(4) that would eliminate commission approval of changes to protocols prior to taking effect. ERCOT pointed out that if the ERCOT board approves a change to the protocols, an aggrieved stakeholder would still retain the right to appeal a protocol amendment to the commission. Furthermore, the stakeholder may also request suspension of the change while the commission considers the appeal.

Commission Response

These suggestions may have merit and will be considered in connection with other projects to amend rules in Chapter 25, as resources and priorities permit. The commission readopts this section.

Section 25.490. Moratorium on Disconnection on Move-Out.

The REP Coalition recommended this section be repealed because all of the TDUs in ERCOT have received approval from the commission to conduct a disconnection of a residential premises after receiving a move-out transaction.

Commission Response

The commission acknowledges that the subsection may be obsolete and will consider the merits of repealing this section in connection with other projects to amend rules in Chapter 25, as resources and priorities permit. The commission readopts this section.

Section 25.505. Resource Adequacy in the Electric Reliability Council of Texas Power Region.

ERCOT also proposed amendments to subsection (c) relating to the annual requirement that it publish a "Statement of Opportunities" (SOO) to (1) change the publishing timelines so as to have the same December 31st deadline for each SOO report in even and odd-numbered years and (2) require that the SOO reports use a five-year study horizon (rather than ten) due to the greater uncertainty of system conditions beyond five years. ERCOT commented that the rule should explicitly recognize that the SOO may consist of multiple reports.

ERCOT further proposed removing the requirement in subsections (d) and (e) that it develop a "Projected Assessment of System Adequacy" (PASA) requirement for Short-Term and Medium-Term horizons because these assessments do not provide any additional information relevant to resource adequacy beyond that already provided in the reports ERCOT publishes pursuant to the SOO requirement in subsection (c). Alternatively, ERCOT suggested striking subsection (d)(1)(B) to eliminate the requirement that it publish ancillary service requirements in the Medium-Term PASA because the factors used to determine ancillary service needs cannot be reliably predicted three years in advance. ERCOT suggested that, consistent with ERCOT's current practice, the commission could evaluate whether a separate requirement to post minimum ancillary services quantities for each upcoming year would be valuable. ERCOT also recommended that the commission explicitly recognize that the Medium-Term and Short-Term PASA requirements may be met by multiple reports.

ERCOT proposed changes to subsections (f) and (g) that correct references and requirements therein that it believes are now either obsolete, inaccurate, or confusing due to developments that have occurred since this section was first enacted-including its transition from a zonal market to a nodal market on December 1, 2010 and a commission determination that the State Estimator report requirement not be implemented because of a lack of cost-effectiveness.

Commission Response

The commission acknowledges the comments of ERCOT and will consider the merit of revising the rule as resources and priorities permit. The commission readopts this section.

The commission appreciates the thoughtful comments on this chapter, but declines to make any changes to Chapter 25 in this rule review at this time. Some of the amendments suggested in the comments might improve the commission's substantive rules, but would require further consideration, including additional notice and public input, before adoption.

The commission has completed the review of Chapter 25 as required by Texas Government Code §2001.039 and has determined that the reasons for initially adopting the rules in Chapter 25 continue to exist. Therefore, the commission re-adopts Chapter 25, Substantive Rules Applicable to Electric Service Providers, in its entirety, under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2017) (PURA) which requires the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §14.052, which requires the commission to adopt and enforce rules governing practice and procedure before the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission; and Texas Government Code §2001.039 (West 2017), which requires each state agency to review and re-adopt its rules every four years.

Cross reference to Statutes: PURA §14.002 and §14.052; APA §2001.039.

TRD-201801629
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 16, 2018

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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 §401.308(d)

Matching Combinations	**Prize Category**	**Prize Amount**	**Odds of Winning**
Match 5 - All five matching numbers in one play	First (Top) Prize	$25,000.00*	1:324,632~~435,897~~
Match 4 - Any four, but not five matching numbers in one play	Second Prize	$350.00	1:2,164~~2,724~~
Match 3 - Any three, but not four or five matching numbers in one play	Third Prize	$15.00	1:75~~88~~
Match 2 - Any two, but not three, four or five, matching numbers in one play.	Fourth Prize	Free Cash Five Quick Pick Ticket ($1 value)	1:8~~9~~
Totals	N/A	N/A	1:7.20

**In any drawing where the number of top prize winning plays is greater than three (3), the top prize shall be paid on a pari-mutuel rather than fixed prize basis and a liability cap of $75,000 will be divided equally by the number of top prize winning plays.*

Figure: 22 TAC §367.17(k)

CLASS A VIOLATIONS			
Number	**Description**	**References**	**Penalty**
1.	Employing a person to engage in plumbing work without the proper endorsement	§1301.452(a)(5); §367.11(c)(2)	$2,000 (+$2,000 if work required a Med Gas Endorsement)
2.	Advertising to perform or provide plumbing without securing the services of a Responsible Master Plumber (RMP)	§1301.351(a-2); §367.9(a)	$2,500
3.	Evading responsibility to an employer	§367.3(a)(3)	$2,500
4.	Failing to verify a Certificate of Insurance (COI) on the Board's website before issuing a permit	§1301.552	$2,500
5.	Falsely claiming that a person is a licensed or registered plumber or using the license or registration number of another	§1301.452(a)(3) and (4); §367.11(e)	$3,000
6.	Falsely claiming that a person has secured the services of a RMP; using the license number of a RMP who is not an owner or employee of the company	§1301.452(a)(3) and (4); §367.9(b); §367.11(e)	$3,000
7.	Performing a plumbing inspection while having a financial or advisory interest in a plumbing company	§1301.353; §367.4(a)(1)	$4,000
8.	Performing a plumbing inspection without the proper license	§1301.351(b); §367.11(b)	$4,000
9.	Engaging in plumbing without the proper license, registration or endorsement	§1301.351(a); §367.11(a)	$4,000 (+$1,000 if work involved natural gas)
10.	Employing an unlicensed or unregistered person	§1301.452(a)(5); §367.11(c)(1)	$4,000
11.	Failing to supervise	§1301.351(a)(2); §367.5(d)	$4,000
12.	Misrepresenting services provided or services to be provided	§1301.452(a)(3); §367.3(c)	$4,000
13.	Making a false promise with the intent to induce a person to contract	§1301.452(a)(4); §367.3(a)	$4,000
14.	Evading responsibility to a client	§367.3(a)(3)	$4,000
15.	Contracting or otherwise offering to perform plumbing without securing the services of a RMP	§1301.351(a-2); §367.9(a)	$5,000
16.	Allowing illegal use of a RMP license	§367.11(f); §367.5(b)	$5,000
17.	Failing to maintain insurance while acting as a RMP	§1301.351(a-1); §1301.3576(1); §1301.552; §367.6(a)	$5,000

18.	Willfully, negligently, or arbitrarily violating a municipal rule or ordinance	§1301.452(a)(2); §367.3(d)	$5,000
19.	Failing to provide a six-hour continuing professional education course	§1301.404; §1301.405; §365.19(c); §365.20(d)(1)	$5,000
20.	Violating a Cease and Desist Order	§1301.5045	Penalty equal to the penalty for whatever activity the Order covered
CLASS B VIOLATIONS			
1.	Engaging in plumbing without direct supervision	§1301.351(a); §365.1(i); §367.11(a)	$1,000
2.	Failing to include the Board's contact information or the name and license number of the RMP on a written proposal, estimate, invoice, or contract	§1301.302; §367.10(c)	$1,000
3.	Failing to permanently display RMP license number or company name on both sides of a service vehicle	§367.10(b)	$1,000
4.	Failing to display or state RMP license number in an advertisement for plumbing	§367.10(d)	$1,000
5.	Failing to include inspector license number on an inspection report	§367.4(e)	$1,000
6.	Failing to provide a COI to the Board	§1301.3576(1); §367.6(b)	$1,000
7.	Failing to provide insurance information to a customer upon request	§367.6(c)	$1,000
8.	Failing to provide an invoice or completed contract upon completion of the job	§1301.302; §367.3(a)(4)	$2,000
9.	Refusing to fill out an Employer Certification Form	§363.2(d)	$2,000
10.	Obtaining or attempting to obtain a license, registration or endorsement through error, fraud, or the provision of false information to the Board	§1301.452(a)(1); §363.23(b)	$2,000
11.	Requiring a person who obtains a permit to pay a registration or administrative fee	§1301.551(g)	$2,000

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 and Texas Health and Safety 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 and the Texas Health & Safety 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 judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code and the Texas Health & Safety Code.

Case Title and Court: *State of Texas v. Alamo Recycle of San Antonio, LLC and 6112 Old Hwy 90, LLC;* Cause No. D-1-GN-16-005763, in the 200th Judicial District Court, Travis County, Texas.

Nature of the Defendants' Operations: 6112 Old Hwy 90, LLC ("6112 Old Hwy") owns the property at 6112 Enrique M. Barrera Parkway in San Antonio (the "Site") where Alamo Recycle of San Antonio, LLC ("Alamo") operates a disposal and storage facility, and has been stockpiling asphalt shingles, lumber, scrap metal, and generic municipal solid waste without processing and recycling the materials. The State filed suit to enjoin Alamo from further accepting materials at the Site, and to dispose of all stockpiled materials at an authorized facility. After the State filed suit, 6112 Old Hwy purchased the Site and was subsequently added to the case. The former owner of the Site, Allied Auto Parts, Inc., entered an Agreed Final Judgment with the State in Cause Number D-1-GN-17-006428, notice of which was published in the January 26, 2018, issue of the *Texas Register* (43 TexReg 477).

Proposed Agreed Judgment: The Agreed Final Judgment and Permanent Injunction awards the State of Texas against Alamo and 6112 Old Hwy civil penalties in the amount of $110,000, and attorney's fees in the amount of $40,000. The Agreed Final Judgment and Permanent Injunction also orders the Defendants to remove all waste from the Site and dispose of it at an authorized facility.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment and Permanent Injunction should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to David Terry, Assistant Attorney General, Office of the Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201801595
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: April 12, 2018

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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 04/23/18 - 04/29/18 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/23/18 - 04/29/18 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 05/01/18 - 05/31/18 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 05/01/18 - 05/31/18 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-201801656
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 17, 2018

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Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application was received from Promise Credit Union (Houston) seeking approval to merge with Houston Metropolitan Federal Credit Union (Houston), with Houston Metropolitan Federal Credit Union being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201801666
Harold E. Feeney
Commissioner
Credit Union Department
Filed: April 18, 2018

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Application to Expand Field of Membership

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application was received from FivePoint Credit Union, Nederland, Texas to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in and other legal entities located on the Bolivar Peninsula, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.cud.texas.gov/page/bylaw-charter-applications. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201801665
Harold E. Feeney
Commissioner
Credit Union Department
Filed: April 18, 2018

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Application to Expand Field of Membership - Approved

InTouch Credit Union #1, Plano, Texas - See *Texas Register* issue dated March 2, 2018

InTouch Credit Union #2, Plano, Texas - See *Texas Register* issue dated March 2, 2018

TRD-201801664
Harold E. Feeney
Commissioner
Credit Union Department
Filed: April 18, 2018

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is May 28, 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 May 28, 2018. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Air Liquide Large Industries U.S. LP; DOCKET NUMBER: 2017-1236-AIR-E; IDENTIFIER: RN100233998; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: cogeneration plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), Texas Health and Safety Code (THSC), §382.085(b), New Source Review (NSR) Permit Numbers 9346 and PSDTX612M2, Special Conditions (SC) Number 3, and Federal Operating Permit (FOP) Number O1735, Special Terms and Conditions (STC) Number 9, by failing to comply with the nitrogen oxides concentration limit for Combustion Turbine 2, 3, and 4, Emissions Point Number (EPN) CG-802, CG-803, and CG-804; and 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), NSR Permit Number 73110, SC Number 8.D, and FOP Number O1735, STC Number 9, by failing to comply with the ammonia concentration limit for the Steam Methane Reformer Process Heater, EPN SMRSTACK; PENALTY: $80,437; Supplemental Environmental Project offset amount of $40,218; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Atascosa Rural Water Supply Corporation; DOCKET NUMBER: 2018-0134-PWS-E; IDENTIFIER: RN101439024; LOCATION: Atascosa, Bexar County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.0315(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter for nitrate; PENALTY: $2,600; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: City of Frost; DOCKET NUMBER: 2018-0047-PWS-E; IDENTIFIER: RN101390268; LOCATION: Frost, Navarro County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: $172; ENFORCEMENT COORDINATOR: Soraya Peters, (512) 239-2695; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: City of Lueders; DOCKET NUMBER: 2018-0020-PWS-E; IDENTIFIER: RN101391340; LOCATION: Lueders, Jones 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 0.080 milligrams per liter (mg/L) for total

trihalomethanes, based on the locational running annual average; 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the executive director (ED) along with certification that the consumer notification has been distributed for the January 1, 2016 - December 31, 2016, monitoring period; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of each public notification to the ED regarding the failure to conduct repeat coliform monitoring for the month of March 2016; 30 TAC §290.122(a)(2) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to comply with the acute MCL for total coliform for September 2015; and 30 TAC §290.115(f)(1) and THSC, §341.0315(c), by failing to comply with the MCL of 0.060 mg/L for haloacetic acids, based on the locational running annual average; PENALTY: $996; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: City of Rio Hondo; DOCKET NUMBER: 2017-1681-PWS-E; IDENTIFIER: RN101209195; LOCATION: Rio Hondo, Cameron County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and §290.122(b)(2)(A) and (f) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.060 milligrams per liter for haloacetic acids (HAA5), based on the locational running annual average, and failing to provide public notification and submit a copy of the public notification to the executive director (ED) regarding the failure to comply with the MCL for HAA5; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a Total Organic Carbon Monthly Operating Report to the ED for the second quarter of 2016 through the first quarter of 2017; and 30 TAC §290.122(b)(3)(A), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to comply with the MCL for total trihalomethanes for the second quarter of 2017; PENALTY: $644; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(6) COMPANY: COKE COUNTY WATER SUPPLY CORPORATION; DOCKET NUMBER: 2017-1107-PWS-E; IDENTIFIER: RN101220820; LOCATION: Robert Lee, Coke County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(2) and (3)(A)(iii), by failing to maintain water works operation and maintenance records and make them available for review by the executive director upon request; 30 TAC §290.46(q) and Texas Health and Safety Code, §341.0315(c), by failing to implement special precautions, protective measures, and boil water notices within 24 hours of becoming aware of conditions which indicate that the potability of the drinking water supply has been comprised; and 30 TAC §290.44(d) and §290.46(r), by failing to provide a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system under normal operating conditions and 20 psi during emergencies such as firefighting; PENALTY: $388; ENFORCEMENT COORDINATOR: James Boyle, (512) 239-2527; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(7) COMPANY: Covestro LLC; DOCKET NUMBER: 2017-1039-AIR-E; IDENTIFIER: RN100209931; LOCATION: Baytown, Chambers County; TYPE OF FACILITY: chemical manufacturing facility; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), New Source Review Permit Number 39943, Special Conditions Number 1, and Federal Operating Permit Number O2529, Special Terms and Conditions Number 13, by failing to comply with the maximum allowable emission rates; and 30 TAC §122.165(a)(8) and THSC, §382.085(b), by failing to include a signed certification of accuracy and completeness with the Permit Compliance Certification; PENALTY: $63,937; Supplemental Environmental Project offset amount of $25,575; ENFORCEMENT COORDINATOR: Jo Hunsberger, (512) 239-1274; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: EAST LAMAR WATER SUPPLY CORPORATION; DOCKET NUMBER: 2018-0065-PWS-E; IDENTIFIER: RN101435881; LOCATION: Center, Shelby County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; and 30 TAC §290.274(b) and (c), by failing to meet the report delivery and recordkeeping requirements for the Consumer Confidence Report for the calendar year 2016; PENALTY: $225; ENFORCEMENT COORDINATOR: Ross Luedtke, (512) 239-3157; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(9) COMPANY: Everest Associates LLC dba Quick Stop; DOCKET NUMBER: 2018-0029-PST-E; IDENTIFIER: RN101433001; LOCATION: Longview, Gregg 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: $3,750; ENFORCEMENT COORDINATOR: Claudia Corrales, (432) 620-6138; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(10) COMPANY: Frank-Mar, Incorporated dba Marino Texaco; DOCKET NUMBER: 2017-1768-PST-E; IDENTIFIER: RN102475852; LOCATION: Richardson, Dallas 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: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: GIRL SCOUTS OF TEXAS OKLAHOMA PLAINS, INCORPORATED; DOCKET NUMBER: 2017-1684-PWS-E; IDENTIFIER: RN101239234; LOCATION: Crosbyton, Crosby County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 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 being notified of a distribution total coliform-positive result during the month of December 2015, and failing to issue public notification and submit a copy of the public notification to the executive director (ED) regarding the failure to conduct raw groundwater source *E. Coli* sampling during the month of December 2015; 30 TAC §290.122(c)(2)(A) and (f), by failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to conduct repeat distribution coliform sampling during the month of December 2015; and 30 TAC §290.122(b)(2)(B) and (f), by failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to comply with the maximum contaminant level for microbial contaminants during the month of December 2015; PENALTY: $342; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OF-

FICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(12) COMPANY: Mesquite Independent School District; DOCKET NUMBER: 2018-0122-PST-E; IDENTIFIER: RN101536688; LOCATION: Mesquite, Dallas County; TYPE OF FACILITY: fleet fueling facility; RULES VIOLATED: 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.50(d)(1)(B)(ii) and TWC, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; PENALTY: $24,750; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: PILOT TRAVEL CENTERS LLC dba Pilot Travel Centers 206; DOCKET NUMBER: 2017-1699-PST-E; IDENTIFIER: RN102239795; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.225, 40 Code of Federal Regulations §63.11120(a), and Texas Health and Safety Code, §382.085(b), by failing to comply with annual Stage I vapor recovery testing requirements; PENALTY: $2,813; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: WAANIYAH TRADERS INCORPORATED dba Express Food Mart; DOCKET NUMBER: 2017-1651-PST-E; IDENTIFIER: RN105011258; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month, and failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: $5,370; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: White River Municipal Water District; DOCKET NUMBER: 2017-1429-PWS-E; IDENTIFIER: RN102673449; LOCATION: Spur, Crosby County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(d)(13), by failing to identify the influent, effluent, waste backwash, and chemical feed lines by the use of labels or various colors of paint; 30 TAC §290.41(c)(3)(O), by failing to protect all completed well units by intruder-resistant fences or enclosure in locked, ventilated well houses to exclude possible contamination or damage to the facilities by trespassers; 30 TAC §290.41(e)(5), by failing to install the raw water pump station and all appurtenances in a lockable building that is designed to prevent intruder access or enclose the raw water pump station and all appurtenances by an intruder-resistant fence with lockable gates; 30 TAC §290.42(f)(1)(E)(ii), by failing to provide adequate containment facilities for all liquid chemical storage tanks; 30 TAC §290.44(h)(1)(A), by failing to install an adequate backflow prevention assembly or an air gap at all residences or establishments where an actual or potential contamination hazard exists, as identified in 30 TAC §290.47(f); 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.44(h)(4), by failing to have all backflow prevention assemblies tested upon installation and on an annual basis by a recognized backflow assembly tester and certify that they are operating within specifications; 30 TAC §290.46(s)(2)(B)(iii), by failing to calibrate on-line turbidimeters with primary standards at least once every 90 days; 30 TAC §290.41(c)(3)(K), by failing to ensure that wellheads and pump bases are properly vented with a well casing vent that is covered with a 16-mesh or finer corrosion-resistant screen, facing downward, elevated and located so as to minimize the drawing of contaminants into the well; 30 TAC §290.42(d)(2)(A), by failing to provide a vacuum breaker on each hose bibb within the surface water treatment plant; 30 TAC §290.46(t), by failing to post a legible sign at the facility's production, treatment, and storage facilities that contains the name of the facility and emergency telephone numbers where a responsible official can be contacted; 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; 30 TAC §290.46(m)(1)(A), by failing to conduct an annual inspection of the facility's 100,000-gallon ground storage tank; and 30 TAC §290.46(s)(1), by failing to calibrate flow measuring devices at least once every 12 months; PENALTY: $4,566; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

TRD-201801650
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 17, 2018

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Notice of District Petition

Notice issued April 13, 2018

TCEQ Internal Control No. D-11002017-018; BOAT Investments LP, a Texas Limited Partnership (the "Petitioner") has filed a petition for creation of Collin County Municipal Utility District No. 2 (the "District") with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) the application includes certificates evidencing the lienholder's consent to the creation of this proposed District; (3) the proposed District will contain approximately 515.53 acres located within Collin County, Texas; and (4) none of the land within the proposed District is within the corporate limits or the extraterritorial jurisdiction of any city town, or village in Texas. The petition further states that the proposed District will: (1) design, construct, acquire, improve, extend, maintain, and operate an adequate and efficient waterworks and sanitary sewer system primarily for residential purposes; (2) design, construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide drainage for the proposed District, and to control, abate, and amend local storm waters or other harmful excesses of water; (3) design, construct, acquire, finance, issue bonds for, and convey roads and improvements in aid of roads; (4) design, construct, acquire, improve, extend, maintain, and operate such other additional facilities, systems, plants, and enterprises inside and outside the District as may be consonant with any or all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the proposed District's projects, and it is estimated by the Petitioners, from such in-

formation available at-this-time, that such cost will be approximately $55,443,226.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-201801669
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 18, 2018

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Westoaks Plaza LLC DBA On Point

SOAH Docket No. 582-18-3058

TCEQ Docket No. 2017-0781-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - May 10, 2018

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed December 22, 2017, concerning assessing administrative penalties against and requiring certain actions of WESTOAKS PLAZA LLC dba On Point, for violations in Anderson County, Texas, of: Tex. Water Code §26.3475(c)(1) and (d) and 30 Tex. Admin. Code §§334.49(a)(4), (c)(2)(C), and (c)(4)(C), 334.50(b)(1)(A), and 334.602(a).

The hearing will allow WESTOAKS PLAZA LLC dba On Point, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford WESTOAKS PLAZA LLC dba On Point, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of **WESTOAKS PLAZA LLC dba On Point** to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. WESTOAKS PLAZA LLC dba On Point, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054, Tex. Water Code chs. 7 and 26, and 30 Tex. Admin. Code chs. 70 and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §70.108 and §70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Ian Groetsch, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at *http://www.tceq.texas.gov/goto/eFilings* or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

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."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: April 11, 2018

TRD-201801673
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 18, 2018

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Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit Major Amendment Proposed Permit No. 954A

Application. City of Roma, P.O. Box 947, Roma, Starr County, Texas 78754, the owner and operator of the City of Roma Landfill, a municipal solid waste (MSW) facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit major amendment to authorize a potential lateral expansion of the existing Type I arid exempt (AE) MSW landfill, and to add separate Type IV-AE cells such that the facility is classified as Type I-AE & Type IV-AE. The facility is located approximately 3 miles northwest of Roma and approximately 1 mile north of FM 650, Roma, in Starr County, Texas 78754. The TCEQ received this application on February 20, 2018. The permit application is available for viewing and copying at the City of Roma, City Hall, 77 Convent Avenue, Roma, Starr County, Texas 78754. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=26.439&lng=- 99.06&zoom=13&type=r. For exact location, refer to application.

Additional Notice. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Opportunity for a Contested Case Hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

To Request a Contested Case Hearing, You Must Include The Following Items in Your Request: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period, and the statement "(I/we) request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

Mailing List. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at www.tceq.texas.gov/about/comments.html or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687- 4040. Further information may also be obtained from the City of Roma at the address stated above or by calling the project manager Ms. Luci Dunn, with eHT at (325) 698-5560.

TRD-201801672
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 18, 2018

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Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit Major Amendment Proposed Permit No. 2120A

Application. Town of Pecos City, 110 East 6th Street, Pecos, Reeves County, Texas 79772, the owner and operator of the City of Pecos Landfill, a municipal solid waste facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit amendment to authorize an increase to the overall disposal capacity of the existing permitted facility. The facility is located approximately 1.8 miles South of Interstate Highway 20, an approximately 0.4 miles East of State Highway 17 in Pecos, Reeves County, Texas 79772. The TCEQ received this application on February 8, 2018. The permit application is available for viewing and copying at the Town of Pecos City, City Hall, 110 East 6th Street, Pecos, Reeves County, Texas 79772. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: *http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=31.37583&lng=-103.51583&zoom=13&type=r. For exact location, refer to application.*

Additional Notice. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Opportunity for a Contested Case Hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application.

If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

To Request a Contested Case Hearing, You Must Include The Following Items in Your Request: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period, and the statement "(I/we) request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

Mailing List. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at <*www.tceq.texas.gov/goto/cid*>. Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at <*www.tceq.texas.gov/about/comments.html*> or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at <*www.tceq.texas.gov/goto/pep*>. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from the Town of Pecos City, at the address stated above or by calling Mr. Nicholas Ybarra, Project Manager, Parkhill, Smith & Cooper, Inc. at (915) 533-6811.

TRD-201801671
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 18, 2018

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Notice of Water Quality Application

The following notices were issued on April 5, 2018.

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

OENE KEUNING for a minor amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004108000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to add one new well, Well #8 to the dairy facility. The currently authorized 999 head total dairy cattle, all of which are milking cows, and total land application area of 314 acres remain unchanged. The facility is located at 4745 County Road 207, Hico, Hamilton County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-201801670
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 18, 2018

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Notice of Water Rights Application

Notices issued April 2, 2018 through April 12, 2018

APPLICATION NO. 13336; North Texas Municipal Water District, Applicant, P.O. Box 2408, Wylie, Texas 75098, seeks a temporary water use permit to divert and use not to exceed 109,070 acre-feet of water within a period of three years from the perimeter of Lake Lavon on the East Fork Trinity River, Trinity River Basin for municipal purposes in Collin, Dallas, Denton, Fannin, Grayson, Hunt, Kaufman, Rockwall, and Van Zandt Counties. The application and partial fees were received on July 18, 2016. Additional information and fees were received on November 22, 2016. The application was declared administratively complete and filed with the Office of the Chief Clerk on January 12, 2017. Additional information was received on July 14, September 14, and October 26, 2017. The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, streamflow restrictions and installing a measuring device for diversions. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F., Austin, TX 78753. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, by April 20, 2018.

APPLICATION NO. 4033B; North Texas Municipal Water District, P.O. Box 2408 Wylie, Texas 75098, Applicant, has applied for an amendment to Water Use Permit No. 4033 to add a diversion reach along the Red River, Red River Basin, add additional acreage to the current place of use in Fannin and Lamar Counties, and add instream use. The application and partial fees were received on May 2, 2017. Additional information and fees were received on June 22 and June 23, 2017. The application was declared administratively complete and filed with the Office of the Chief Clerk on July 24, 2017.

The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, installing screens on any new diversion structures. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F., Austin, TX 78753. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by May 1, 2018.

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement [I/we] request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711 3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-201801668
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 18, 2018

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Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Julia Shinn at (512) 463-5797.

Deadline: Semiannual Report due January 16, 2018, for Candidates and Officeholders

Bernardo T. Aldape, 530 Arvana, Houston, Texas 77034

Warren Blake Baker, P.O. Box 80874, Austin, Texas 78708

Spencer R. Bounds, 2408 Wydewood Dr., Midland, Texas 79707

Marisa Bono, P.O. Box #100086, San Antonio, Texas 78201

Joshua G. Burns, 905 S. Jennings Ave. #2117, Fort Worth, Texas 76104

Steven M. Cantu, 514 Emmett Ave., San Antonio, Texas 78221

Andy M. Chatham, 9804 Spirehaven Ln., Dallas, Texas 75238-3464

Aaron D. Close, 18021 Kingsland Blvd., Apt. 6204, Houston, Texas 77094

Robin C. Conklin, 16406 14th St., Cypress, Texas 77429

C. Brandon Creighton, 2257 N. Loop 336, Ste. 140-366, Conroe, Texas 77304

Pamela Curry, P.O. Box 836615, Richardson, Texas 75083-6615

LaTronda T. Darnell, 5641 Copper Creek, New Braunfels, Texas 78132-3921

Frances V. Dunham, 700 N. St. Mary's #1400, San Antonio, Texas 78205

Kimberly Faith Emery, 1308 Red Oak Creek Dr., Ovilla, Texas 75154

Gabriel D. Farias, 1122 Par Four, San Antonio, Texas 78221-3153

Jess A. Fields, P.O. Box 1776, College Station, Texas 77841

Matthew Taylor Flores, 5707 4th Ave. #710, Canyon, Texas 79015

Christopher Lauren Graham, P.O. Box 226265, Dallas, Texas 75222 2

Matthew S. Green, 4429 Bowser Ave., Apt. 106, Dallas, Texas 75219

Angela K. Hayes, 4848 Pin Oak Park Apt. 425, Houston, Texas 77081

Delicia Herrera, P.O. Box 37409, San Antonio, Texas 78237

Andres Holliday, 6629 E. Kings Crown, San Antonio, Texas 78233

The Estate of Charles F. Howard, 9300 U.S. Highway 90A, Sugar Land, Texas 77478

Lawrence Wade Johnson, 2809 13th Ave N., Texas City, Texas 77590

Edward J. Kless, 1581 Bradford Trace, Allen, Texas 75002

Barbara Krueger, 3837 Wintergreen Dr., Plano, Texas 75074

Damian LaCroix, 4910 Maxie St., Houston, Texas 77007

David M. Medina, 1200 Smith St., 14th Floor, Houston, Texas 77002-4310

Mallory A. Olfers, 14900 Nacogdoches Rd. Apt. 2403, San Antonio, Texas 78247

Shane B. Piel, 5225 Fort Buckner Dr., McKinney, Texas 75070

Aron Ra, P.O. Box 497091, Garland, Texas 75043

Zachary Reames-Zepeda, 1612 Ave. Y, Apt. B317, Lubbock, Texas 79410

Jeffery A. Rank, P.O. Box 18787, Corpus Christi, Texas 78480

Janis M. Richards, 957 Nasa Road One #342, Houston, Texas 77058

Osbert G. Rodriguez, 1020 Dennet Rd., Brownsville, Texas 78526

Sylvia Rodriguez, 1317 E. Alabama St., Pearsall, Texas 78061

Gena N. Slaughter, 111 W. Spring Valley Rd., Ste. 250, Richardson, Texas 75081

Demetria Y. Smith, P.O. Box 12070, Austin, Texas 78711-9998

Larry S. Smith, 5900 Drystone, Killeen, Texas 76542

Paul K. Stafford, 3355 Blackburn St. #6305, Dallas, Texas 75204

Kyle Brandon Stephenson, 17318 Lake Chelan Ln., Humble, Texas 77346 3

Elizabeth R. Tarrant, 756 N. Barton St., Stephenville, Texas 76401-3157

Robert Christopher Walden, 1302 Leader Dr., Killeen, Texas 76549

Christopher L. Ward, P.O. Box 8585, Round Rock, Texas 78683

Benjamin R. Wetmore, 5401 S. FM 1626 #170-229, Kyle, Texas 78640

Erin A. Zwiener, P.O. Box 184, Driftwood, Texas 78619

Deadline: Unexpended Contributions Report due January 16, 2018, for Former Candidates and Officeholders

Nicole Elizalde Henning, 435 W. Nakoma St., Ste. 101, San Antonio, Texas 78216-2627

William Scott Golemon, 815 W. Davis St., Ste. 300, Conroe, Texas 77301

TRD-201801599
Seana Willing
Executive Director
Texas Ethics Commission
Filed: April 12, 2018

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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 April 9, 2018, through April 13, 2018. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, April 20, 2018. The public comment period for this project will close at 5:00 p.m. on Sunday, May 20, 2018.

FEDERAL AGENCY ACTIONS:

Applicant: Kathy Bouvier

Location: English Bayou

Latitude & Longitude (NAD 83): 29.282809 -94.830636

Project Description: The applicant proposes to deconstruct and fill an existing boat slip with approximately 185 cubic yards (~0.02 acres) of fill material. After filling the boat slip, the applicant proposes to install a 100-foot bulkhead that will be connected to the neighbor's existing bulkhead. The applicant proposes to construct and maintain a 52-foot by 36-foot structure that consists of a pier, palapa, and boathouse with a lift for recreation.

Type of Application: U.S. Army Corps of Engineers(USACE) permit application # SWG-2017-00758. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899.

CMP Project No: 18-1126-F1

Applicant: Houston Fuel Oil Terminal Company

Location: Waters and wetlands adjacent to Carpenters Bayou

Latitude & Longitude (NAD 83): 29.756685 -95.115681

Project Description: The applicant proposes to discharge an estimated 120,000 cubic yards of dredged material into 4.11 acres of wetlands and 784.5 linear feet of waters adjacent to Carpenters Bayou to construct a dredged material placement cell and an above ground storage tank facility within the applicant's facility. The return water from the constructed dredged material placement cell will be discharged into Carpenters Bayou. The applicant also proposes to perform maintenance dredging to a depth of -20 feet mean low tide (mlt) for a period of 10 years. The dredge area begins at the 227-foot-wide public right of way, starting at the mouth of Carpenters Bayou, and continues west to conclude at the turning basin. The dredged material will be placed at the following dredged material placement areas (DMPAs): East and West Jones, Pinto Lion, Jacintoport Dredge Material Storage and Reclamation Facility (Glanville Facility), Clinton, Rosa Allen, Stimson Tract, House Tract, Dorsett, Glendale, Greens Bayou, Beltway 8 Tract, Targa, Filter Bed, Wah Chang, Lost Lake, Goat Island, Peggy Lake, Alexander Island, Spillman Island, Atkinson Island, Hog Island, and onsite locations per Department of the Army (DA) Permits SWG-1997-01189 and SWG-2007-01866, formerly 22404. The applicant also proposes to discharge fill material within the return water from placement of hydraulically dredged material within the above listed upland contained dredge material placement areas.

Type of Application: U.S. Army Corps of Engineers(USACE) permit application # SWG-2007-01866. This application will be reviewed pursuant to 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: 18-1145-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-201801658
Mark A. Havens
Chief Clerk and Deputy Land Commissioner
General Land Office
Filed: April 17, 2018

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates for Ambulance and Dental Services

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 3, 2018, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Ambulance and Dental Services. The proposed rate actions are consistent with the legislative directive in Rider 33, Article II of the General Appropriations Act for the 2018-2019 Biennium, that HHSC develop and implement cost containment initiatives, including fee-for-service payment changes that incentivize the most appropriate and effective use of services.

The public hearing will be held in HHSC's Public Hearing Room at the Brown-Heatly Building, located at 4900 North Lamar Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. HHSC also will 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. The payment rates are proposed to be effective September 1, 2018, for the following services:

Ambulance Services; and

Dental Services (Texas Health Steps Dental/Orthodontia).

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners;

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps); and

§355.8600, which addresses the reimbursement methodology for ambulance 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 April 19, 2018. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting HHSC Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at *RADAcuteCare@hhsc.state.tx.us.* The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to *RADAcuteCare@hhsc.state.tx.us.* In addition, written comments may be sent by overnight mail or hand delivered to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-201801620
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: April 13, 2018

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Texas Lottery Commission

Notice of Public Comment Hearing

A public hearing to receive comments regarding proposed amendments to 16 TAC §401.308 ("Cash Five" Draw Game Rule) will be held on Wednesday, May 9, 2018, at 9:30 a.m. at 611 E. 6th Street, Austin, TX 78701. Persons requiring any accommodation for disability should notify Debbie Jamieson at (512) 344-5038 at least 72 hours prior to the public hearing.

TRD-201801604

Bob Biard
General Counsel
Texas Lottery Commission
Filed: April 13, 2018

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Notice of Public Comment Hearing

A public hearing to receive comments regarding proposed amendments to 16 TAC §402.102 (Bingo Advisory Committee), §402.300 (Pull-Tab Bingo), and §402.402 (Registry of Bingo Workers) will be held on Wednesday, May 9, 2018, at 10:00 a.m. at 611 E. 6th Street, Austin, Texas 78701. Persons requiring any accommodation for disability should notify Debbie Jamieson at (512) 344-5038 at least 72 hours prior to the public hearing.

TRD-201801611
Bob Biard
General Counsel
Texas Lottery Commission
Filed: April 13, 2018

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Scratch Ticket Game Number 2044 "The Cash Wheel"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2044 is "THE CASH WHEEL". The play style is "row/column/diagonal".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2044 shall be $3.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2044.

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: ARMORED CAR SYMBOL, BANK SYMBOL, BAR SYMBOL, BELL SYMBOL, CLOVER SYMBOL, COINS SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, HEART SYMBOL, KEY SYMBOL, LEMON SYMBOL, MOON SYMBOL, NECKLACE SYMBOL, ORANGE SYMBOL, RING SYMBOL, STAR SYMBOL, WISHBONE SYMBOL, $3.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $500 and $25,000.

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. 2044 - 1.2D

PLAY SYMBOL	CAPTION
ARMORED CAR SYMBOL	ARM CAR
BANK SYMBOL	BANK
BAR SYMBOL	BAR
BELL SYMBOL	BELL
CLOVER SYMBOL	CLOVER
COINS SYMBOL	COINS
CROWN SYMBOL	CROWN
DIAMOND SYMBOL	DIAMOND
HEART SYMBOL	HEART
KEY SYMBOL	KEY
LEMON SYMBOL	LEMON
MOON SYMBOL	MOON
NECKLACE SYMBOL	NECKLACE
ORANGE SYMBOL	ORANGE
RING SYMBOL	RING
STAR SYMBOL	STAR
WISHBONE SYMBOL	WISHBONE
$3.00	THR$
$4.00	FOR$
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$500	FVHN
$25,000	25TH

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 (2044), 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: 2044-0000001-001.

H. Pack - A Pack of the "THE CASH WHEEL" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Ticket 125 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 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 "THE CASH WHEEL" Scratch Ticket Game No. 2044.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "THE CASH WHEEL" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 25 (twenty-five) Play Symbols. If a player reveals 3 matching symbols in any horizontal, vertical or diagonal line, the player wins both prizes for that line as shown by the 2 corresponding arrows. 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 25 (twenty-five) 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 25 (twenty-five) 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 25 (twenty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 25 (twenty-five) 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.

Programmed Game Parameters.

A. A Ticket can win up to four (4) times in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. Winning Tickets will have no more than four (4) occurrences of three (3) matching Play Symbols in any row, column, or diagonal line as dictated by the prize structure.

E. Non-Winning Tickets will contain at least three (3) pairs of matching Play Symbols.

F. Non-winning Prize Symbols will never appear more than three (3) times.

G. Play Symbols will not appear more than two (2) times on a Ticket except when constructing a winning row, column or diagonal line.

H. There will be two (2) $25,000 Prize Symbols on both ends of a row, column, or diagonal line on every Ticket, unless restricted by the prize structure, play action or other parameters.

2.3 Procedure for Claiming Prizes.

A. To claim a "THE CASH WHEEL" Scratch Ticket Game prize of $6.00, $7.00, $8.00, $10.00, $12.00, $15.00, $20.00, $30.00, $50.00, $100 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, $50.00, $100 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 "THE CASH WHEEL" Scratch Ticket Game prize of $1,000 or $50,000, 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 "THE CASH WHEEL" 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 "THE CASH WHEEL" 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 "THE CASH WHEEL" 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 Scratch Ticket Game No. 2044. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2044 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$6	518,400	13.89
$7	288,000	25.00
$8	172,800	41.67
$10	172,800	41.67
$12	115,200	62.50
$15	57,600	125.00
$20	57,600	125.00
$30	22,680	317.46
$50	14,400	500.00
$100	7,200	1,000.00
$500	360	20,000.00
$1,000	17	423,529.41
$50,000	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 5.05. 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. 2044 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2044, 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-201801651
Bob Biard
General Counsel
Texas Lottery Commission
Filed: April 17, 2018

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North Central Texas Council of Governments

Request for Information for Industry Partners to Demonstrate Advanced Technology Solutions to Statewide Freight and Logistic Challenges

The North Central Texas Council of Governments (NCTCOG) in partnership with the Texas Department of Transportation (TxDOT) and the Texas Innovation Alliance (TIA) are requesting information for potential partnerships that are capable of addressing challenges to freight mobility across multiple environments: long-haul freight in the Texas Triangle (the area formed by the intersections of I-35 and I-45 southward to I-10, and extending to Laredo, Texas); major urban intersections; port and border crossing connections; first- and last-mile collection and distribution; and data insight opportunities. Information received will be used to shape strategies leading to deployment of innovative freight and logistics solutions throughout Texas.

Proposals must be received no later than 5:00 p.m. Central Time, Friday, June 8, 2018, to Clint Hail, Automated Vehicle Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. The full Request For Information (RFI), including selection criteria and other desired elements, will be available at www.nctcog.org/rfp by the close of business on Friday, April 27, 2018.

NCTCOG and TIA encourage participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-201801667
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: April 18, 2018

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Panhandle Regional Planning Commission

Legal Notice

The Panhandle Regional Planning Commission (PRPC) is seeking proposals from qualified organizations with demonstrated competence, knowledge, qualifications, successful performance, and reasonable fees to implement a year-round Paid Work Experience Services program to develop work opportunities for students with disabilities in coordination with the workforce development programs administered in the Panhandle Workforce Development Area (PWDA). The purpose of this solicitation is to enable PRPC to evaluate and select an entity capable of performing these services and to enter into negotiation for a contract at a fair and reasonable price.

Interested proposers may obtain a copy of the solicitation packet by contacting Leslie Hardin, at (806) 372-3381/ (800) 477-4562 or lhardin@theprpc.org. The packet may also be picked up at PRPC's offices located at 415 S.W. 8th Avenue in Amarillo, Texas 79101. The proposals must be submitted to PRPC no later than May 15th, 2018.

PRPC as administrative and fiscal agent for the Panhandle Workforce Development Board dba Workforce Solutions Panhandle, a proud partner of the AmericanJobCenter Network, is an Equal Opportunity Employer / Program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas: 711

TRD-201801594
Leslie Hardin
WFD Contracts Coordinator
Panhandle Regional Planning Commission
Filed: April 12, 2018

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Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transaction

Preservation Easement - Aransas County

Grant for Recreation Hall Repair - Goose Island State Park

In a meeting on May 24, 2018, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the grant of a term preservation easement to the Texas Historical Commission at Goose Island State Park in Aransas County. The easement will allow Texas Parks and Wildlife Department to accept a Texas Preservation Trust Fund grant from the Texas Historical Commission to repair and preserve the park's Recreation Hall, a historic structure. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Lubbock Memorial Civic Center, 1501 Mac Davis Lane, Lubbock, Texas 79401. Prior to the meeting, public comment may be submitted to Trey Vick, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email to *trey.vick@tpwd.texas.gov;* or via the department's website at *www.tpwd.texas.gov.*

TRD-201801625
Colette Barron Bradsby
Staff Attorney
Texas Parks and Wildlife Department
Filed: April 16, 2018

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Public Utility Commission of Texas

Amended Notice of Application to Amend a Water Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application to amend a water certificate of convenience and necessity (CCN) in Angelina and Nacogdoches Counties.

Docket Style and Number: Application of City of Lufkin to Amend its Water Certificate of Convenience and Necessity and to Decertify a Portion of Redland Water Supply Corporation's Service Area in Angelina and Nacogdoches Counties, Docket Number 47589.

The Application: The City of Lufkin filed an application to amend its water certificate of convenience and necessity number 10355 in Angelina and Nacogdoches Counties. The total area being requested includes approximately 1,679 acres and 1 current customer.

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 47589.

TRD-201801644
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 16, 2018

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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 April 5, 2018, in accordance with the Texas Water Code.

Docket Style and Number: Application of Bourland Field Development Corporation and Bourland Estates Water Supply Corporation for Sale, Transfer, or Merger of Facilities and Certificate Rights in Parker County, Docket Number 48232.

The Application: Bourland Field Development Corporation and Bourland Estates Water Supply Corporation filed an application for the transfer of facilities and certificate rights in Parker County. Specifically, Bourland Field Development seeks to transfer its water service area facilities under certificate of convenience and necessity number 12899 to Bourland Estates Water Supply. The transfer includes 39 current customers.

Persons who wish to intervene in the proceeding or comment upon 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 Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired

individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 48232.

TRD-201801626
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 16, 2018

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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 April 13, 2018, under the Public Utility Regulatory Act, Tex. Util. Code Ann. §39.154 and §39.158.

Docket Style and Number: Application of Cleco Cajun LLC Under §39.158 of the Public Utility Regulatory Act, Docket Number 48266.

The Application: On April 13, 2018, Cleco Cajun LLC filed an application for approval of the purchase of Cottonwood Energy Company LP. The combined generation owned and controlled by Cleco its affiliates following the proposed purchase will not exceed 20% of the total electricity offered for sale in the Electric Reliability Council of Texas.

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 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 48266.

TRD-201801661
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 18, 2018

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Notice of Application for Service Area Exception

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on April 6, 2018, for a certificate of convenience and necessity service area exception within Webb County.

Docket Style and Number: Application of AEP Texas, Inc. for a Certificate of Convenience and Necessity Service Area Exception in Webb County. Docket Number 48240.

The Application: AEP Texas, Inc. filed an application for a service area exception to allow AEP to provide service to a specific customer located within the certificated service area of Medina Electric Cooperative, Inc. Medina has provided an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than April 30, 2018, 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 48240.

TRD-201801641
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: April 16, 2018

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Notice of Application for True-Up of 2015 Federal Universal Service Fund Impacts to the Texas Universal Service Fund

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on March 6, 2018, for true-up of 2015 Federal Universal Service Fund (FUSF) Impacts to the Texas Universal Service Fund (TUSF).

Docket Style and Number: Application of Valley Telephone Cooperative, Inc. for True-Up of 2015 FUSF Impacts to the TUSF, Docket Number 48145.

The Application: Valley Telephone Cooperative, Inc. (VTCI) filed a true-up report in accordance with finding of fact Nos. 20 thru 23 of the final Order in Docket No. 45182. In Docket No. 45182 the Public Utility Commission of Texas approved VTCI's application to recover funds from the TUSF and ordered a true-up of the FUSF revenue changes. This application addresses VTCI's final and actual impacts to the FUSF revenues received during 2015.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48145.

TRD-201801643
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 16, 2018

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Notice of Application to Amend a Service Provider Certificate of Operating Authority

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 12, 2018, in accordance with Public Utility Regulatory Act §§54.151-54.156.

Docket Title and Number: Application of Peoples to Amend a Service Provider Certificate of Operating Authority, Docket Number 48263.

Applicant seeks to amend service provider certificate of operating authority number 60916 to reflect a corporate restructuring.

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 May 14, 2018. 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 48263.

TRD-201801659
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 17, 2018

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Notice of Application to Amend Water and Sewer Certificates of Convenience and Necessity

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 10, 2018, to amend water and sewer certificates of convenience and necessity.

Docket Style and Number: Application of Stanley Lake Municipal Utility District to Amend Certificates of Convenience and Necessity and to Decertify Portions of SC Utilities and T&W Water Service Company's Certificated Service Areas in Montgomery County, Docket Number 48250.

The Application: Stanley Lake Municipal Utility District filed an application to amend certificates of convenience and necessity numbers 11222 and 20483 in Montgomery County. The total area being requested includes approximately nine acres and six 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 48250.

TRD-201801660
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 17, 2018

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Supreme Court of Texas

In the Supreme Court of Texas

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," this order is not included in the print version of the Texas Register. The order is available in the on-line version of the April 27, 2018, issue of the Texas Register.)

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 18-9060

ORDER APPROVING AMENDMENTS TO THE RULES AND FEES OF THE JUDICIAL BRANCH CERTIFICATION COMMISSION AND ADOPTING A CODE OF ETHICS FOR CERTIFIED SHORTHAND REPORTERS AND COURT REPORTING FIRMS

ORDERED that:

1. The Supreme Court of Texas approves the following amendments to the rules and fees of the Judicial Branch Certification Commission and also adopts the attached Code of Ethics for Certified Shorthand Reporters and Court Reporting Firms.

2. The rule and fee amendments incorporate changes to comply with Act of May 19, 2017, 85th Leg., R.S., ch. 313 (SB 1096, codified at TEX. GOV'T CODE § 155); Act of May 24, 2017, 85th Leg., R.S., ch. 516 (SB 43, codified at TEX. GOV'T CODE Chs. 151–57); and Act of May 25, 2017, 85th Leg., R.S., ch. 715 (SB 36, codified at TEX. GOV'T CODE § 155).

3. The rule amendments take effect immediately, except:

   a. amendments to Rule 3.2(c) and new Rule 7.8(a) take effect September 1, 2018;

   b. new Rules 10, 10.1, 10.2, 10.3, 10.4, 10.5, and 10.6 take effect on June 1, 2018.

4. The fee amendments take effect September 1, 2018.

5. The Code of Ethics takes effect immediately.

6. The Code of Ethics supersedes the Code of Professional Conduct for Certified Shorthand Reporters and Court Reporting Firms that is currently in effect.

7. The Clerk is directed to:

   a. file a copy of this order with the Secretary of State;

   b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

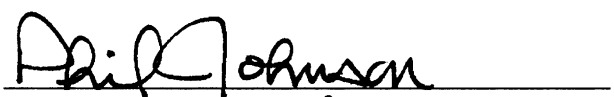
   c. send a copy of this order to each elected member of the Legislature; and

   d. submit a copy of this order for publication in the *Texas Register*.

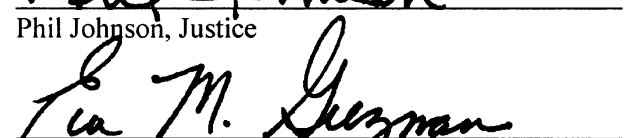
Dated: April 12, 2018.

Nathan L. Hecht, Chief Justice

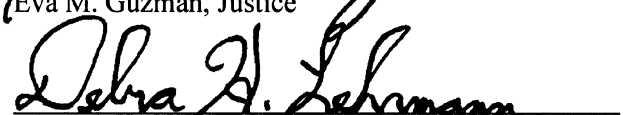
Paul W. Green, Justice



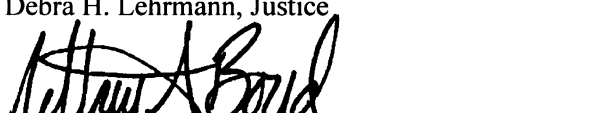
Phil Johnson, Justice



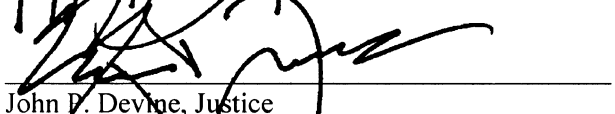
Eva M. Guzman, Justice



Debra H. Lehrmann, Justice

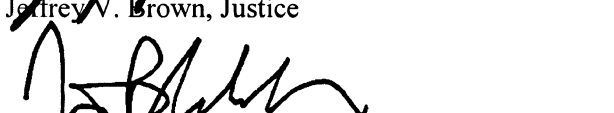


Jeffrey S. Boyd, Justice



John P. Devine, Justice

Jeffrey V. Brown, Justice



James D. Blacklock, Justice

TRD-201801597

Jaclyn Lynch
Rules Attorney
Supreme Court of Texas
Filed: April 12, 2018

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 18-9061

ORDER ADOPTING AMENDMENTS TO TEXAS RULE OF APPELLATE PROCEDURE 24.2

ORDERED that:

1. To comply with the Act of May 24, 2017, 85th Leg., R.S., ch. 868 (HB 2776, codified at TEX. GOV'T CODE § 22.004), the Court adopts amendments to Texas Rule of Appellate Procedure 24.2.

2. The amendments take effect May 1, 2018. But the amendments may later be changed in response to public comments. Any person may submit written comments to rulescomments@txcourts.gov. The Court requests that comments be sent by June 30, 2018.

3. The Clerk is directed to:

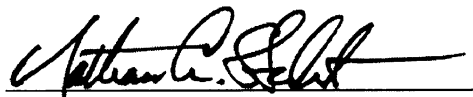
   a. file a copy of this order with the Secretary of State;

   b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

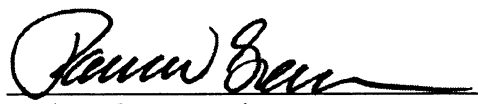
   c. send a copy of this order to each elected member of the Legislature; and

   d. submit a copy of the order for publication in the *Texas Register*.

Dated: April 12, 2018.

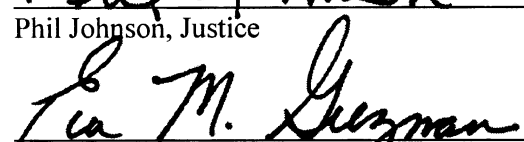


Nathan L. Hecht, Chief Justice

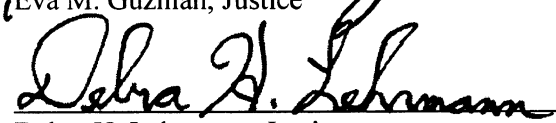


Paul W. Green, Justice

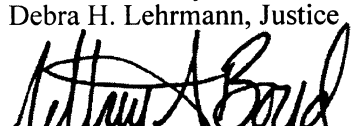
Phil Johnson, Justice



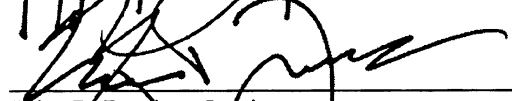
Eva M. Guzman, Justice



Debra H. Lehrmann, Justice

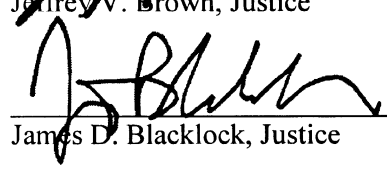


Jeffrey S. Boyd, Justice



John P. Devine, Justice

Jeffrey V. Brown, Justice



James D. Blacklock, Justice

Rule 24.2. Amount of Bond, Deposit, or Security

***

(a) *Type of Judgment.*

***

(3) Other Judgment. When the judgment is for something other than money or an interest in property, the trial court must set the amount and type of security that the judgment debtor must post. The security must adequately protect the judgment creditor against loss or damage that the appeal might cause. But the trial court may decline to permit the judgment to be superseded if the judgment creditor posts security ordered by the trial court in an amount and type that will secure the judgment debtor against any loss or damage caused by the relief granted the judgment creditor if an appellate court determines, on final disposition, that that relief was improper. When the judgment debtor is the state, a department of this state, or the head of a department of this state, the trial court must permit a judgment to be superseded except in a matter arising from a contested case in an administrative enforcement action.

***

TRD-201801598
Jaclyn Lynch
Rules Attorney
Supreme Court of Texas
Filed: April 12, 2018

♦ ♦ ♦

Teacher Retirement System of Texas

Award Notice - TRS Contract K201800242

Per Texas Government Code §2254.030, the Teacher Retirement System of Texas (TRS) announces this notice of award for Operational, Organizational and Resource Review consulting services to McKinsey & Company, Inc. Washington D.C., 1200 19th Street NW, Suite 1100, Washington D.C. 20036. The term of the contract is April 3, 2018, through September 30, 2018. The contract total is estimated to be $2,000,000.00.

TRD-201801619
Brian Guthrie
Executive Director
Teacher Retirement System of Texas
Filed: April 13, 2018

♦ ♦ ♦

Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Engineering Services

The City of Mineral Wells, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an engineering firm for professional services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualification statements for the current aviation project as described below.

Current Project: City of Mineral Wells; TxDOT CSJ No.: 1802MNWLS.

The TxDOT Project Manager is Robert Johnson, P.E.

Scope: Provide engineering and design services, including construction administration, to:

1. Rehabilitate and mark Runway 13-31;

2. Rehabilitate and mark Taxiways A, B, and D;

3. Remove and relocate Taxiway C;

4. Rehabilitate and mark main apron and parking areas; and

5. Mark grass islands on main apron.

The Agent, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§2000d to 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit in response to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The proposed contract is subject to 49 CFR Part 26 concerning the participation of Disadvantaged Business Enterprises (DBE).

The DBE goal for the design phase of the current project is 5%. The goal will be re-set for the construction phase.

Utilizing multiple engineering, design and construction grants over the course of the next five years, future scope of work items at the Mineral Wells Airport may include the following: rehabilitate and mark Runway 17/35; rehabilitate and mark Taxiway G; rehabilitate and mark Taxiway F; construct new access taxiway to eastern helipad area; narrow and shorten Runway 17/35; and relocate lights for Runway 17/35.

The City of Mineral Wells reserves the right to determine which of the services listed above may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services listed above.

To assist in your qualification statement preparation, the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at *http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm* by selecting "Mineral Wells Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects.

AVN-550 Preparation Instructions:

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, (800) 68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html.* The form may not be altered in any way. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight pages of data plus one optional illustration page. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, or submits a cover page with the AVN-550, that provider will be disqualified. Responses to this solicitation WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

The completed Form AVN-550 must be received in the TxDOT Aviation eGrants system no later than May 31, 2018, 11:59 p.m. (CDST). Electronic facsimiles or forms sent by email or regular/overnight mail will not be accepted.

Firms that wish to submit a response to this solicitation must be a user in the TxDOT Aviation eGrants system no later than one business day before the solicitation due date. To request access to eGrants, please complete the Contact Us web form located at *http://txdot.gov/government/funding/egrants-2016/aviation.html*

An instructional video on how to respond to a solicitation in eGrants is available at *http://txdot.gov/government/funding/egrants-2016/aviation.html*

Step by step instructions on how to respond to a solicitation in eGrants will also be posted in the Request for Qualifications (RFQ) packet at *http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm.*

The consultant selection committee will be composed of local government representatives. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html*

under Information for Consultants. All firms will be notified and the top rated firm will be contacted to begin fee negotiations for the design and bidding phases. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at (800) 68-PILOT (74568). For procedural questions, please contact Beverly Longfellow. For technical questions, please contact Robert Johnson, P.E., Project Manager.

For questions regarding responding to this solicitation in eGrants, please contact the TxDOT Aviation help desk at (800) 687-4568 or *avn-egrantshelp@txdot.gov.*

TRD-201801628
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: April 16, 2018

♦ ♦ ♦

Texas Water Development Board

Applications for April 2018

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #73738, a request from the City of Alamo, 420 N. Tower Rd., Alamo, Texas 78516, received September 22, 2017, for $11,500,500 in financial assistance consisting of $10,335,000 in financing and $1,165,500 in principal forgiveness from the Clean Water State Revolving Fund for construction of a wastewater treatment plant project.

Project ID #62765, a request from the Rochelle Water Supply Corporation, P.O. Box 70, Rochelle, Texas 76872-0070, received September 29, 2017, for $300,000 in principal forgiveness from the Drinking Water State Revolving Fund to finance planning, design, and construction of water treatment plant improvements.

Project ID #62767, a request from Patterson Water Supply, LLC., 446 Graham Grove Rd., Collinsville, Texas 76233-2958, received October 5, 2017, for $138,780 in principal forgiveness from the Drinking Water State Revolving Fund to finance design and construction of water distribution line replacement.

Project ID #62782, a request from the Nevada Special Utility District, P.O. Box 442, Nevada, Texas 75173-0442, received October 19, 2017, for $1,490,000 in financing from the Drinking Water State Revolving Fund for planning, design and construction of water system improvements.

Project ID #62764, a request from the City of Mason, P.O. Box 68, Mason, Texas 76856-0068, received September 22, 2017, for $2,659,200 in financial assistance consisting of $990,000 in financing and $1,669,200 in principal forgiveness from the Drinking Water State Revolving Fund for planning, design, and construction of a radionuclide treatment project.

Project ID #73797, a request from Brookshire Municipal Water District, P.O. Box 1850, Brookshire, Texas 77423-1850, received January 22, 2018, for $490,000 in principal forgiveness from the Clean Water State Revolving Fund for design and construction of a Hurricane Harvey disaster recovery wastewater project.

Project ID #62771, a request from G-M Water Supply Corporation, 4444 Westheimer; Ste. G500, Houston, Texas 77027, received October 5, 2017, for $5,490,900 in financial assistance consisting of $2,775,000 in financing and $2,715,900 in principal forgiveness from the Drinking Water State Revolving Fund for planning, design, and construction of water system improvements.

Project ID #73774 a request from the City of Houston, 611 Walker, Houston, Texas 77002-1562, received September 14, 2017, for $64,685,000 in financing from the Clean Water State Revolving Fund for construction of wastewater system improvements.

Project ID #62783, a request from the Whitewater Springs Water Supply Corporation, 212 Ashe Juniper Way, Bertram, Texas 78605, received November 10, 2017, for $500,000 in financial assistance consisting of $200,000 in financing and $300,000 in principal forgiveness from the Drinking Water State Revolving Fund for planning, acquisition, design and construction of a water system improvement project.

TRD-201801630
Todd Chenoweth
General Counsel
Texas Water Development Board
Filed: April 16, 2018

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Workforce Solutions for the Heart of Texas

Request for Proposal

(RFP# 13180101)

Operation and Management of the Child Care Services (CCS) Program

Workforce Solutions for the Heart of Texas (WSHOT) is soliciting proposals for the operation and management of the Child Care Services Program. WSHOT is the administrative entity for programs funded by the Texas Workforce Commission. The Workforce Solutions for the Heart of Texas serves McLennan, Falls, Bosque, Freestone, Limestone and Hill Counties.

The initial contract period will begin on October 1, 2018. Eligible service providers must have extensive knowledge and experience including a successful track record in child care services programs, state and federal laws and statutes.

The Request for Proposal (RFP) may be obtained by emailing Judy Hedge at *Judy.Hedge@hotworkforce.com.* The RFP is also available on the WSHOT website at *http://www.hotworkforce.com* under Contractors and Vendors.

A Bidders Conference will be held on Tuesday, April 24, 2018, at 10:30 a.m. at the McLennan County Workforce Solutions Center located at 1416 S. New Road, Waco, Texas. Attendance is not mandatory, but strongly recommended.

Proposals are due no later than 3:00 p.m. (CST) Tuesday, May 15, 2018, to:

Heart of Texas Workforce Development Board, Inc.

801 Washington Avenue, Suite 700

Waco, Texas 76701

(254) 296-5300

http://www.hotworkforce.com

Workforce Solutions for the Heart of Texas is an equal opportunity employer/programs and auxiliary aids and services are available upon request to include individuals with disabilities. TTY/TDD via RELAY Texas service at 711 or (TDD) (800) 735-2989/ (800) 735-2988 (voice).

TRD-201801652

Anthony Billings
Executive Director
Workforce Solutions for the Heart of Texas
Filed: April 17, 2018

♦ ♦ ♦

How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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