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# TEXAS REGISTER

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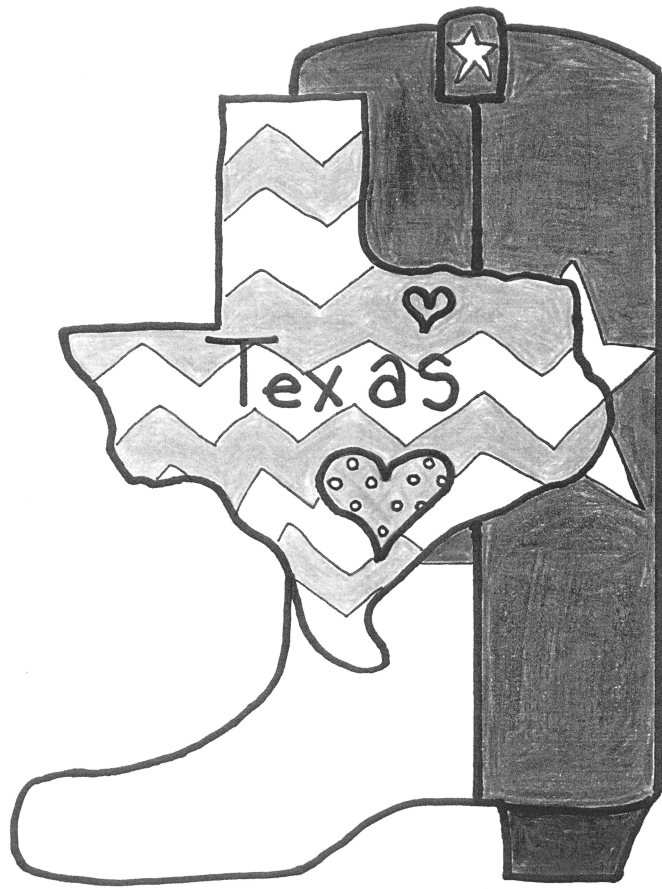
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# THE GOVERNOR

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

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## Appointments

### Appointments for November 14, 2023

Pursuant to HB 1555, 88th Legislature, Regular Session, six members of the Upper Guadalupe River Authority drew lots and the board member terms are as follows:

#### To Expire February 1, 2025:

Jeanne C. Stacy of Ingram

#### To Expire February 1, 2027:

Austin C. Dickson of Kerrville

Diane L. McMahon of Kerrville

William R. "Bill" Rector, M.D. of Kerrville

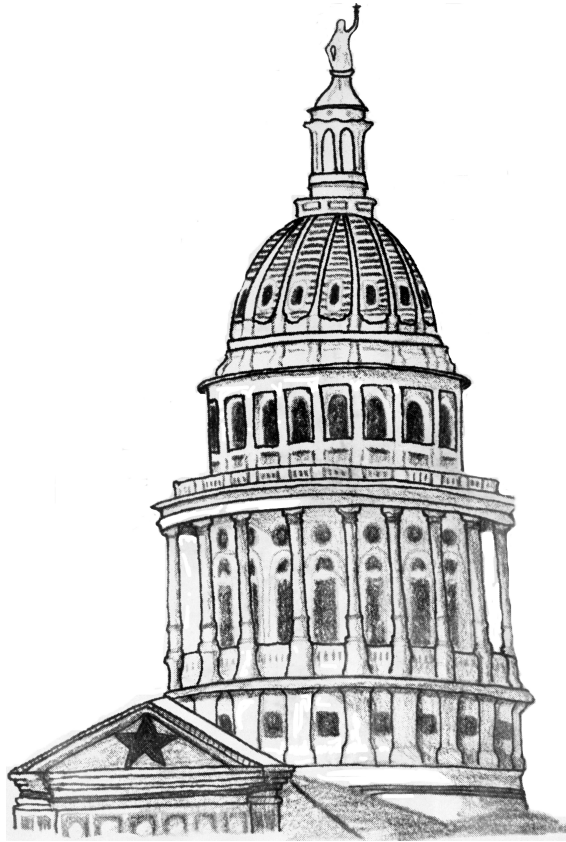
Blake W. Smith of Hunt

Margaret B. Snow of Kerrville

Greg Abbott, Governor

TRD-202304316







# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 7. PESTICIDES

##### SUBCHAPTER D. USE AND APPLICATION

###### 4 TAC §7.30

The Texas Department of Agriculture (Department) proposes amendments to Texas Administrative Code (TAC), Title 4, Part 1, Chapter 7, Subchapter D, §7.30 relating to "Classification of Pesticides." The proposed amendments add a new subsection (d) to classify pesticide products containing the active ingredient warfarin as "state-limited-use" pesticides when used as a feral hog toxicant and to establish related licensure requirements. The amendments are proposed to ensure proper sales, use, and compliance by trained individuals and to address the risk of potential misapplication or distribution resulting in possible secondary exposure to humans or non-target animals.

In addition, the proposed amendments align with the findings and results of the Final Report for the experimental use program conducted by Texas A&M University Agrilife Extension Service (Texas A&M Agrilife) to evaluate the pesticide's efficacy in the State of Texas as directed by the Texas Legislature through its enactment of Senate Bill 1, General Appropriations Act (2022-2023 Biennium), 87th Leg., R.S., art. IV, Rider 28(b), pp. IV-10 to IV-11 ("GAA Rider 28"). Moreover, the proposed amendments are consistent with the legislative restrictions on the Department's authority during the course of the experimental use program; GAA Rider 28 expressly authorized the Department "to register a pesticide product containing warfarin for use in this state to control feral hogs *only if that registration is limited to use by pesticide applicators licensed by the department* who are participating in an experimental use program conducted by the Texas A&M Agrilife Extension Service to evaluate the product's efficacy in this state and the product is registered by the United States Environmental Protection Agency for use to control feral hogs." (Emphasis added.) Texas A&M Agrilife issued its final report for the experimental use program (Final Report) on August 28, 2023. Based on the Final Report, including available data from the Texas A&M Agrilife experimental use program, the Department has determined that use of a pesticide product containing warfarin is safe and effective in assisting landholders to mitigate economic harm and damage caused by feral hogs. The Department is proposing amendments to §7.30 on a permanent basis.

Texas Agriculture Code, Chapter 76, Subchapter C, designates the Department as the state agency responsible for registering pesticides in Texas. Prior to distribution or use in Texas, a prod-

uct must be registered with the Department. Section 7.10 of 4 TAC Part 1, Chapter 7, relating to "Registration of Pesticides," provides that a registration application must include proof of federal registration by the Environmental Protection Agency (EPA), among other requirements.

The Department received a pesticide registration application for a product containing the active ingredient warfarin used only as a feral hog (*Sus scrofa*) toxicant. The application included EPA approval of the product with classification as "general use," without restrictions on the sale or purchase of the product by members of the public. The Department approved the registration in compliance with §7.10 and Chapter 76 of the Texas Agriculture Code. In order to avoid distribution to unqualified users, which may result in product misapplication and the possible secondary exposure to humans or non-target animals, new §7.30(d) imposes stricter regulations than those approved by the EPA by designating the product as a "state-limited-use" product.

New §7.30(d) requires the licensure of applicators or distributors of warfarin, only when used as a feral hog toxicant, subject to the requirements set forth in Chapter 76 of the Texas Agriculture Code and Chapter 1951 of the Texas Occupations Code. In order to distribute a "state-limited-use" pesticide, a dealer is required to hold a pesticide dealer's license, issued by the Department. A person may not purchase or use a "state-limited-use" pesticide, unless licensed as a pesticide applicator, or under the direct supervision of a licensed applicator. Licensees must meet criteria adopted in rule by the Department under 4 TAC Part 1, Chapter 7, including compliance with mandatory recordkeeping requirements. In addition, continuing education and training help to ensure safe and proper use, as well as understanding and compliance with all product labeling requirements. As with all pesticides, warfarin, when used as a feral hog toxicant, must be used in strict accordance with product labeling, as required by state and federal law.

**FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT:** Philip Wright, Administrator for Agriculture and Consumer Protection, has determined there will be no fiscal implications for state or local government as a result of the proposed rule changes.

**PUBLIC BENEFITS AND PROBABLE ECONOMIC COSTS:** Mr. Wright has determined that for each year of the first five years these amendments are in effect, there will be minimal economic effect on businesses or individuals who are required to secure licensure to comply with the proposal. However, the cost of licensure, which is a normal cost of doing business required for all pesticide dealers and applicators, provides a significant public benefit by ensuring that the product is only used and distributed by qualified individuals and businesses in accordance with strict labeling requirements, mandatory rules and laws.

LOCAL EMPLOYMENT IMPACT STATEMENT: Mr. Wright has determined that the proposed amendments will not affect a local economy, so the Department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Department has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002 is not required.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, Mr. Wright provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years these rules will be in effect:

- (1) the proposed amendments will not create or eliminate a government program;
- (2) implementation of the proposed amendments will not require the creation or elimination of existing employee positions;
- (3) implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the Department;
- (4) the proposed amendments will not require an increase or decrease in fees paid to the Department;
- (5) the proposed amendments do not create a new regulation;
- (6) the proposed amendments will not expand, limit, or repeal an existing regulation;
- (7) the proposed amendments will not increase or decrease the number of individuals subject to the rules; and
- (8) the proposed amendments will not affect this state's economy.

In accordance with Texas Agriculture Code, Section 76.003(a) and Section 76.104, the Department shall conduct a public hearing to receive comments on the proposed amendments in person during the 30-day public comment period for this rulemaking and shall post notice of the date, time, and location on the Department website, as well as through publication of a Miscellaneous Notice in the *Texas Register*.

Written comments on the proposal may be submitted to Philip Wright, Administrator for Agriculture and Consumer Protection, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to [Philip.Wright@TexasAgriculture.gov](mailto:Philip.Wright@TexasAgriculture.gov) with a subject line reading "Public Comment - State-Limited-Use Pesticide; Warfarin." Comments must be submitted no later than 30 days from the date of publication of this rule proposal in the *Texas Register*.

The amendments are proposed pursuant to Section 76.003 of the Texas Agriculture Code, which allows the Department to adopt a list of state-limited-use pesticides and to regulate their terms and conditions of use; Section 76.004 of the Code, which allows the Department to adopt rules for carrying out the provisions of Chapter 76 of the Code, to include rules providing for the distribution of pesticides; and Section 76.104 of the Code, which allows the Department to adopt rules related to the use and application of pesticides to include rules related to

restricted-use and state-limited-use pesticides and regulated herbicides.

The code affected by the proposed amendments is Texas Agriculture Code, Chapter 76.

§7.30. *Classification of Pesticides.*

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

(d) State-Limited-Use Pesticides Defined by Active Ingredient and Use.

(1) A pesticide product containing the active ingredient warfarin when used only as a feral hog (*Sus scrofa*) toxicant is classified as a state-limited-use pesticide and subject to the restrictions listed in paragraph (2) of this subsection, as well as all other provisions of law generally applicable to state-limited-use pesticides.

(2) Restrictions.

(A) A person may not purchase a pesticide classified as state-limited-use under this subsection unless the person is licensed as a pesticide applicator under either Chapter 76 of the Texas Agriculture Code or Chapter 1951 of the Texas Occupations Code or working under the direct supervision of a person so licensed.

(B) A person may not use a pesticide classified as state-limited-use under this subsection unless the person is licensed as a pesticide applicator under either Chapter 76 of the Texas Agriculture Code or Chapter 1951 of the Texas Occupations Code or working under the direct supervision of a person so licensed.

(C) A person may not distribute a pesticide classified as state-limited-use under this subsection to a person not authorized by this section to purchase state-limited-use pesticide.

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

Filed with the Office of the Secretary of State on November 16, 2023.

TRD-202304304  
Susan Maldonado  
General Counsel  
Texas Department of Agriculture  
Earliest possible date of adoption: December 31, 2023  
For further information, please call: (512) 463-6591

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**TITLE 16. ECONOMIC REGULATION**

**PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION**

**CHAPTER 33. LICENSING**

**SUBCHAPTER E. EVENTS AT A TEMPORARY LOCATION**

**16 TAC §§33.70 - 33.72, 33.76, 33.77, 33.81**

The Texas Alcoholic Beverage Commission (TABC) proposes to amend 16 TAC §§33.70-33.72, 33.76, 33.77, 33.81, relating to Events at a Temporary Location. The proposed amendments are necessary to implement legislation. Senate Bill 926 (88th Regular Session) authorized the temporary sale of wine and malt

beverages by a mixed beverage permit holder in certain high-capacity facilities that are open to the public during certain motor vehicle racing events. Senate Bill 1375 (88th Regular Session) authorized a distiller's and rectifier's permit holder to conduct samplings or tastings at certain temporary events. Sections 71, 112, 122, 128, and 247 of House Bill 1545 (86th Regular Session) authorized various permit holders to sell different alcoholic beverages at certain temporary events. These bills all required TABC to adopt implementing rules.

The proposed amendments to §§33.72, 33.77(f), and 33.81 implement SB 926 by: (1) acknowledging that mixed beverage permittees may sell wine and malt beverages for more than four consecutive days at an authorized temporary event, as provided in Alcoholic Beverage Code §28.20(c); (2) clarifying the recordkeeping and reporting obligations of mixed beverage permittees who sell wine or malt beverages in a county other than the county in which the temporary event premises is located, consistent with Alcoholic Beverage Code §28.20(e); (3) clarifying that if an authorized temporary event is held in a county that includes more than one territory, as that term is defined by Alcoholic Beverage Code §102.71(5), the mixed beverage permittee must purchase malt beverages from the distributor holding the territorial agreement covering the temporary event location; and (4) clarifying that if an authorized temporary event is held in a county other than the county in which the mixed beverage permit holder's premises is located, the mixed beverage permittee must purchase wine from a wholesaler authorized to sell wine in the county covering the temporary event location.

The proposed amendments to §§33.70, 33.71, 33.76, and 33.77(d) implement SB 1375 and HB 1545 by: (1) changing the scope and applicability of Chapter 33, Subchapter E to include temporary events conducted under Chapter 14 of the Alcoholic Beverage Code; (2) acknowledging that certain temporary events are eligible for File and Use Notification even if sponsored by a distiller's and rectifier's permittee or winery permittee; (3) providing that distilled spirits samplings or tastings at temporary events conducted in accordance with Alcoholic Beverage Code §14.09 may be conducted using File and Use Notification, without the need to obtain prior approval from the Commission; and (4) clarifying the requirements to verify the wet/dry status of the governing jurisdiction where the temporary event will be held.

TABC presented the proposed amendments at a stakeholder meeting on October 5, 2023, and received comments. TABC considered those comments when drafting this proposal.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Julie Ross, Director of Licensing, has determined that during each year of the first five years the proposed amendments are in effect, there will be no fiscal impact on state or local governments as a result of enforcing or administering the amended rules. Mrs. Ross made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the amended rules. Mrs. Ross also does not anticipate any measurable effect on local employment or a local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTICE.** For each year of the first five years the proposed amendments are in effect, Mrs. Ross expects that enforcing or administering the proposed amendments will have the public benefit of ensuring that TABC's rules comply with newly enacted statutes related to temporary events and clarifying the various requirements and responsibili-

ties associated with the sale or provision of alcoholic beverages at temporary events, consistent with the agency's public safety mission. Mrs. Ross does not expect the proposed amendments to impose an economic cost on persons required to comply with the amended rules beyond any costs imposed by statute.

#### ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.

TABC has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TABC is not required to prepare a regulatory flexibility analysis.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TABC has determined that for each year of the first five years that the proposed amendments are in effect, they:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

**TAKINGS IMPACT ASSESSMENT.** TABC has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** TABC will consider any written comments on the proposal that are received by TABC no later than 5:00 p.m., central time, on December 31, 2023. Send your comments to [rules@tabc.texas.gov](mailto:rules@tabc.texas.gov) or to the Office of the General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711-3127. TABC staff will hold a public hearing to receive oral comments on the proposed amendments at 10:00 a.m. on December 14, 2023. **THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY.** Interested persons should visit the TABC's public website at [www.tabc.texas.gov](http://www.tabc.texas.gov), or contact TABC Legal Assistant Kelly Johnson at (512) 206-3367, prior to the meeting date to receive further instructions.

**STATUTORY AUTHORITY.** TABC proposes the amendments pursuant to TABC's rulemaking authority under Texas Alcoholic Beverage Code §§5.31, 14.09(g), 16.12(c), 25.16(c), 28.19(c), 28.20(g), 32.25(d), and 69.18(c). Section 5.31 authorizes TABC to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code. Section 14.09(g) requires TABC to adopt rules to implement distilled spirits sampling at temporary events. Section 28.20(g) requires TABC to adopt rules implementing temporary sales at certain racing facilities. Sections 16.12(c), 25.16(c), 28.19(c), 32.25(d), and

69.18(c) require TABC to adopt rules implementing temporary sales by various permittees at a temporary event location.

CROSS-REFERENCE TO STATUTE. The proposed amendments to §§33.70, 33.71, 33.76, and 33.77(d) implement Alcoholic Beverage Code §§14.01 and 14.09. The proposed amendments to §§33.72, 33.77(f), and 33.81 implement Alcoholic Beverage Code §§28.06, 28.10, and 28.20. The proposed amendments to §§ 33.76(a)(2)(F) and 33.77(d) also implement Alcoholic Beverage Code §§ 14.09, 16.12, 25.16, 28.19, 32.25, and 69.18.

§33.70. *Scope and Applicability.*

(a) This subchapter ~~rule~~ relates to Chapters 14, 16, 25, 28, 30, 32, and 69 of the Alcoholic Beverage Code.

(b) (No change.)

§33.71. *Classification of Event Authorizations.*

(a) A File and Use Notification does not require prior approval of the commission and may be used only if:

(1) the estimated total wholesale value of the alcohol to be provided or sold at the event is less than \$10,000;

(2) the estimated attendance at the event is not more than 500 persons;

(3) the event is private and not open to the general public;

(4) the event is not sponsored by a member of the wholesale tier or the manufacturing tier, unless the event is conducted pursuant to Chapters 14 or 16 of the Alcoholic Beverage Code; and

(5) the owner of the premises where the event will be held has authorized the sale or service of alcohol at the event.

(b) In determining whether an event meets the requirement of subsection (a)(3) of this section, the commission may consider whether tickets are sold and whether the event spans more than one day.

(c) A Nonprofit Entity Temporary Event is a picnic, celebration, or similar event, such as a cultural, charitable, religious, or civic event of a limited and specified duration that is organized for, and open to the public and is put on by a nonprofit entity as defined by Alcoholic Beverage Code §30.01.

(d) For all other events that will be held at a temporary location, a Temporary Event Approval is required.

(e) Notwithstanding subsections (a)(1)-(4) and (d) of this section, holders of a distiller's and rectifier's permit may conduct distilled spirits samplings or tastings at a civic or distilled spirits festival, farmers' market, celebration, or similar event in accordance with Alcoholic Beverage Code §14.09 without obtaining prior approval from the commission by submitting a notice on forms provided by the commission.

§33.72. *Term of Authorization; Annual Limitation on Authorizations.*

(a) Temporary Event Approvals and File and Use Notifications shall be effective for no more than four consecutive days, except as provided by subsection (b) of this section.

(b) Temporary Event Approvals issued to holders of a mixed beverage permit for events conducted in accordance with Alcoholic Beverage Code §28.20 may be effective for:

(1) no more than five consecutive days; or

(2) up to six consecutive days if necessary to accommodate the postponement of a scheduled racing event due to an act of nature.

(c) ~~[(b)]~~ A person or entity may use a Temporary Event Approval or File and Use Notification at the same location for no more

than ten events in a calendar year if the person or entity that will hold the authorization has an ownership interest in the real property or a portion of it or has a lease for its use of the location. For purposes of this rule, a lease is defined as a contractual agreement by which one party conveys an estate in property to another party, for a limited period, subject to conditions, in exchange for something of value, but retains ownership. The ten-event limitation does not apply to a location that meets the definition of a Public Entertainment Facility in Alcoholic Beverage Code §108.73, regardless of whether it holds that designation.

(d) ~~[(e)]~~ A Nonprofit Entity Temporary Event Permit shall be effective for no more than ten consecutive days unless the executive director or the executive director's designated representative, on the basis of a case-by-case review of the specific situation, grants additional time.

(e) ~~[(d)]~~ Upon written request, the executive director or the executive director's designated representative may make an exception to the limitations of subsections (a), ~~[(b)]~~ (c), and (d) of this section on a case-by-case basis. An exception request will be granted or denied in writing.

(f) ~~[(e)]~~ Authorization for an event under this subchapter automatically terminates upon issuance of a two-year license or permit for the event location, regardless of the term of the temporary event authorization.

(g) ~~[(f)]~~ The effective dates of an event authorization under this subchapter must cover the period in which alcoholic beverages will be delivered or stored in addition to the event itself.

(h) ~~[(g)]~~ A temporary permit or license expires on the date indicated on the license or permit or on the same date as the primary permit, whichever occurs earlier.

§33.76. *File and Use Notifications.*

(a) To qualify to use a File and Use Notification, the notification must include:

(1) all information requested by the commission; and

(2) a sworn statement that:

(A) the estimated total wholesale value of the alcohol to be provided or sold at the event is less than \$10,000;

(B) the estimated attendance at the event is not more than 500 persons;

(C) the event is private, and not open to the general public;

(D) the event is not sponsored by a member of the wholesale tier or the manufacturing tier, unless the event is conducted pursuant to Chapters 14 or 16 of the Alcoholic Beverage Code; ~~and~~

(E) the owner of the premises where the event will be held has authorized the sale or service of alcohol at the event; and ~~[-]~~

(F) verifies the wet/dry status of the governing jurisdiction where the event will be held.

(b) Except as provided by §33.71(e) of this title, an ~~AN~~ event that does not meet the criteria in subsection (a)(2) of this section requires approval by the commission.

(c) - (e) (No change.)

§33.77. *Request for Temporary Event Approval.*

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

(d) In addition to the request form, other documents related to the event that may be required include a letter from the property

owner, sponsorship agreements, promoter agreements, concession agreements, management agreements, diagrams, site maps, local governmental authorization (including wet/dry status), and any other documents needed to determine qualification under the Alcoholic Beverage Code.

(e) (No change.)

(f) Upon written notice to the commission, the effective dates for a racing event conducted pursuant to Alcoholic Beverage Code §28.20 may be extended if necessary to accommodate the postponement of a scheduled racing event due to an act of nature. The effective dates may not exceed six consecutive days, as provided in §28.20(c).

§33.81. *Purchase of Alcoholic Beverages for a Temporary Event.*

(a) This section applies to holders of Mixed Beverage Permits when selling alcoholic beverages at an event authorized by a Temporary Event Approval or under a File and Use Notification.

(b) Except as provided by subsection (c) of this section, a Mixed Beverage Permit holder purchasing alcoholic beverages for an event at a temporary location in a county other than the county in which the premises covered by its primary permit is located must:

(1) purchase the alcoholic beverages from a seller authorized under this code to sell the alcoholic beverages to members of the retail tier in the county in which the permit holder sells the alcoholic beverages under this section; and

(2) keep a record of the amount of alcoholic beverages purchased and sold under this section, by type, for no less than two years following the last day of the event.

(c) If the temporary event is held in a county that includes more than one territory, as that term is defined by Alcoholic Beverage Code §102.71(5), a Mixed Beverage Permit holder must purchase malt beverages from the distributor holding the territorial agreement covering the temporary event location.

(d) Except as restricted by subsection (e) for certain events, this [This] section does not preclude a Mixed Beverage Permit holder from transporting alcoholic beverages in stock at its primary location to a temporary event.

(e) Holders of Mixed Beverage Permits who sell wine and malt beverages at an event authorized by Alcoholic Beverage Code §28.20 in a county other than the county in which the premises covered by the permit is located must:

(1) purchase all wine and malt beverages sold at the event from a distributor or wholesaler authorized to sell the beverages in the county in which the permit holder sells the alcoholic beverages under this subsection;

(2) comply with subsections (b)(2) and (c) of this section;  
and

(3) report to the commission, on forms provided by the commission, the amount of beverages purchased and sold at the event.

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

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

TRD-202304255

James Person

General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: December 31, 2023

For further information, please call: (512) 206-3230

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## CHAPTER 41. AUDITING

### SUBCHAPTER B. RECORDKEEPING & REPORTS

#### 16 TAC §41.25

The Texas Alcoholic Beverage Commission (TABC) proposes to amend 16 TAC §41.25, relating to Providing Retailer Samples: Distiller's and Rectifier's Permit. The proposed amendment is necessary to implement new legislation and provide clarity for impacted permittees. Senate Bill 1375 (88th Regular Session) authorized a distiller's and rectifier's permit holder to conduct samplings or tastings at certain temporary events. The proposed amendment to §41.25 implements SB 1375 by acknowledging that a distiller's and rectifier's permit holder may conduct samplings or tastings consistent with SB 1375 and clarifies that samples of distilled spirits taken from a distiller's inventory for such events qualify as a first sale for purposes of excise tax payments under Alcoholic Beverage Code §§201.02 and 201.03. A conforming change is also made to the rule's title.

TABC presented the proposed amendment at a stakeholder meeting on October 5, 2023, and received comments. TABC considered those comments when drafting this proposal.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Andrea Maceyra, Chief of Regulatory Affairs, has determined that during each year of the first five years the proposed amendment is in effect, there will be no fiscal impact on state or local governments as a result of enforcing or administering the amended rule. Mrs. Maceyra made this determination because the proposed amendment does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the amended rule. Mrs. Maceyra also does not anticipate any measurable effect on local employment or a local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed amendment is in effect, Mrs. Maceyra expects that enforcing or administering the proposed amendment will have the public benefit of ensuring that TABC's rule complies with and implements existing statutes related to excise taxes. Mrs. Maceyra does not expect the proposed amendment to impose an economic cost on persons required to comply with the amended rule.

#### ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.

TABC has determined that the proposed amendment will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TABC is not required to prepare a regulatory flexibility analysis.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TABC has determined that for each year of the first five years that the proposed amendment is in effect, it:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TABC has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TABC will consider any written comments on the proposal that are received by TABC no later than 5:00 p.m., central time, on December 31, 2023. Send your comments to [rules@tabc.texas.gov](mailto:rules@tabc.texas.gov) or to the Office of the General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711-3127. TABC staff will hold a public hearing to receive oral comments on the proposed amendments at 10:00 a.m. on December 14, 2023. THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY. Interested persons should visit the TABC's public website at [www.tabc.texas.gov](http://www.tabc.texas.gov), or contact TABC Legal Assistant Kelly Johnson at (512) 206-3367, prior to the meeting date to receive further instructions.

STATUTORY AUTHORITY. TABC proposes the amendment pursuant to TABC's rulemaking authority under Texas Alcoholic Beverage Code §§5.31 and 14.09(g). Section 5.31 authorizes TABC to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code. Section 14.09(g) requires TABC to adopt rules to implement distilled spirits sampling at temporary events.

CROSS-REFERENCE TO STATUTE. The proposed amendment implements Alcoholic Beverage Code §§14.09 and 201.03.

§41.25. *Providing [Retailer] Samples: Distiller's and Rectifier's Permit.*

(a) A holder of a Distiller's and Rectifier's Permit may provide samples obtained from the distiller's inventory to: ~~[a retailer in accordance with Alcoholic Beverage Code §14.07.]~~

(1) a retailer in accordance with Alcoholic Beverage Code §14.07; and

(2) a consumer in accordance with Alcoholic Beverage Code §14.09.

(b) Samples taken from the distiller's inventory are considered "first sale" for purposes of taxation under Alcoholic Beverage Code §201.03. The holder of the Distiller's and Rectifier's Permit shall remit excise taxes for samples taken from inventory not later than the 15th day of the month following the month in which occurs the "first sale."

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

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

TRD-202304256

James Person

General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: December 31, 2023

For further information, please call: (512) 206-3230



## CHAPTER 45. MARKETING PRACTICES SUBCHAPTER F. ADVERTISING AND PROMOTION

### 16 TAC §45.117

The Texas Alcoholic Beverage Commission (TABC) proposes to amend 16 TAC §45.117, relating to Gifts and Advertising Specialties. The proposed amendment to §45.117 would allow TABC to increase or decrease the total amount of advertising specialties furnished to a retailer under §102.07(b) of the Alcoholic Beverage Code by order of the executive director instead of through formal rulemaking. The proposed amendment does not change the total amount of advertising specialties currently allowed under law. Rather, it aligns the process for setting the amount with the process contemplated in §102.07(b), which specifically states that the executive director may change the amount not more than once a year. Under the proposed amendment, any order issued by the executive director must be published in the *Texas Register* and on the agency's website.

TABC presented the proposed amendment at a stakeholder meeting on October 5, 2023, and received comments. TABC considered those comments when drafting this proposal.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Andrea Maceyra, Chief of Regulatory Affairs, has determined that during each year of the first five years the proposed amendment is in effect, there will be no fiscal impact on state or local governments as a result of enforcing or administering the amended rule. Mrs. Maceyra made this determination because the proposed amendment does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the amended rule. Mrs. Maceyra also does not anticipate any measurable effect on local employment or a local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendment is in effect, Mrs. Maceyra expects that enforcing or administering the amended rule will have the public benefit of aligning the agency's rule with statute and reducing the amount of time it takes the agency to adjust the limit on advertising specialties to account for fluctuations in the consumer price index's annual average. Mrs. Maceyra does not expect the proposed amendment to impose an economic cost on persons required to comply with the amended rule.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TABC has determined that the proposed amendment will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TABC is not required to prepare a regulatory flexibility analysis.

GOVERNMENT GROWTH IMPACT STATEMENT. TABC has determined that for each year of the first five years that the proposed amendment is in effect, it:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TABC has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TABC will consider any written comments on the proposal that are received by TABC no later than 5:00 p.m., central time, on December 31, 2023. Send your comments to [rules@tabc.texas.gov](mailto:rules@tabc.texas.gov) or to the Office of the General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711-3127. TABC staff will hold a public hearing to receive oral comments on the proposed amendments at 10:00 a.m. on December 14, 2023. THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY. Interested persons should visit the TABC's public website at [www.tabc.texas.gov](http://www.tabc.texas.gov), or contact TABC Legal Assistant Kelly Johnson at (512) 206-3367, prior to the meeting date to receive further instructions.

STATUTORY AUTHORITY. TABC proposes the amendment pursuant to TABC's rulemaking authority under Texas Alcoholic Beverage Code §5.31. Section 5.31 authorizes TABC to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

CROSS-REFERENCE TO STATUTE. The proposed amendment implements Alcoholic Beverage Code §102.07(b).

§45.117. *Gifts and Advertising Specialties.*

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

(c) Gifts to Retailers. Holders of distiller's and rectifier's, winery, nonresident seller's and wholesaler's permits may furnish advertising specialties to retailers.

(1) (No change.)

(2) The total cost of all advertising specialties furnished to a retailer shall not exceed the amount set by order of the executive director in accordance with Alcoholic Beverage Code §102.07(b) [~~§125~~] per brand per calendar year. The executive director's order shall be published in the *Texas Register* and on the commission's website. Dollar limitations may not be pooled to provide a retailer with advertising specialties in excess of the maximum permitted under this subsection.

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

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

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

TRD-202304257

James Person

General Counsel

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3230



## CHAPTER 50. ALCOHOLIC BEVERAGE SELLER SERVER AND DELIVERY DRIVER TRAINING

The Texas Alcoholic Beverage Commission (TABC) proposes to amend 16 TAC §§50.3 - 50.6 and 50.29, relating to Alcoholic Beverage Seller Server and Delivery Driver Training. The proposed amendments to §50.3 eliminate outdated references to the process TABC used to develop the original mandatory course curriculum for seller server training. The proposed amendments also simplify the process for updating the curriculum. As proposed, §50.3 will allow TABC's executive director or their designee to update the curriculum as needed and will require the agency to post notice of any such changes on its website and in the *Texas Register*.

The proposed amendments to §§50.4 - 50.6 and 50.29 implement Senate Bill 998 (88th Regular Session), which requires TABC to develop a program that would provide training on the signs and symptoms of an opioid-related drug overdose and the administration of an opioid antagonist. TABC will require this opioid-related training to be included in the mandatory course curriculum for seller server training. To account for the inclusion of this new opioid-related training, the proposed amendments to §§50.4 - 50.6 and 50.29 simply increase the minimum minutes of active instruction and student participation in the mandatory curriculum from 120 to 140.

TABC presented the proposed amendments at a stakeholder meeting on October 5, 2023, and received comments. TABC considered those comments when drafting this proposal.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Ashleigh Jons, Deputy Director of Training, has determined that during each year of the first five years the proposed amendments are in effect, there will be no fiscal impact on state or local governments because of enforcing or administering the amended rules, other than that imposed by the statute. Ms. Jons made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments. Ms. Jons also does not anticipate any measurable effect on local employment or the local economy because of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Jons expects that enforcing or administering the amended rules will have the public benefit of implementing SB 998's opioid-related training requirements, providing clarity by removing outdated lan-

guage from current rules, and simplifying the process TABC uses to ensure necessary updates are made to alcoholic beverage-related training. Ms. Jons does not expect the proposed amendments will impose economic costs on persons required to comply with the amended rules.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TABC has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TABC is not required to prepare a regulatory flexibility analysis.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TABC has determined that for each year of the first five years that the proposed amendments are in effect, they:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

**TAKINGS IMPACT ASSESSMENT.** TABC has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** TABC will consider any written comments on the proposal that are received by TABC no later than 5:00 p.m., central time, on December 31, 2023. Send your comments to [rules@tabc.texas.gov](mailto:rules@tabc.texas.gov) or to the Office of the General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711-3127. TABC staff will hold a public hearing to receive oral comments on the proposed amendments at 10:00 a.m. on December 14, 2023. **THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY.** Interested persons should visit the TABC's public website at [www.tabc.texas.gov](http://www.tabc.texas.gov), or contact TABC Legal Assistant Kelly Johnson at (512) 206-3367, prior to the meeting date to receive further instructions.

## SUBCHAPTER B. MANDATORY CURRICULUM AND COURSE OF INSTRUCTION

### 16 TAC §§50.3 - 50.6

**STATUTORY AUTHORITY.** TABC proposes the amendments pursuant to TABC's rulemaking authority under Texas Alcoholic Beverage Code §5.31 and §106.14(b). Section 5.31 authorizes TABC to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code. Section 106.14(b)

requires TABC to adopt rules or policies establishing the minimum requirements for approved seller training programs.

**CROSS-REFERENCE TO STATUTE.** The proposed amendments implement Alcoholic Beverage Code §§5.61, 28.20, 32.26, and 106.14.

#### §50.3. *Mandatory Course Curriculum.*

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

(f) When the executive director or their designee changes the curriculum, the commission will post notice in the *Texas Register* and on the commission's website that such changes have been made. ~~[In developing the original mandatory curriculum pursuant to subsection (a) of this section, the commission will conduct work group meetings with members representing a cross-section of interested parties. After receiving input from the work group, the staff of the commission will present its recommended mandatory curriculum to the commissioners at an open meeting. After the original mandatory curriculum is developed, the commission will review it after every session of the legislature to determine if changes are required. If changes to the curriculum are required simply to update it to reflect legislative changes, the commission will make such changes and post notice in the *Texas Register* and on the commission's website that such changes have been made. If the commission wants to make other changes to the curriculum, it will publish notice of such intent in the *Texas Register* and on the commission's website.]~~

#### §50.4. *Commission Approval of Classroom-Based Course of Instruction.*

(a) (No change.)

(b) All classroom-based training materials and courses of instruction must be submitted to the commission for approval.

(1) A classroom-based course of instruction must be paced to provide a minimum of 140 ~~[120]~~ minutes of active instruction and student participation in the mandatory curriculum.

(2) The 140-minute ~~[120-minute]~~ requirement excludes time taken for breaks and the administration of the Commission Standard Competence Test.

(3) The 140-minute ~~[120-minute]~~ requirement is based on a 6th grade comprehension and reading skills level.

(4) (No change.)

(c) Upon approval by the commission, a classroom-based school may present a course of instruction including optional material in addition to the mandatory curriculum if:

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

(4) additional time is added to the course of instruction to ensure that 140 ~~[120]~~ minutes are devoted entirely to the mandatory curriculum.

(d) (No change.)

#### §50.5. *Commission Approval of Internet-Based Course of Instruction.*

(a) (No change.)

(b) An internet-based course of instruction shall be presented at a 6th grade fluency level of 180 words per minute and must be equivalent to 140 ~~[120]~~ minutes of time.

(c) - (d) (No change.)

#### §50.6. *Management of Classroom-Based Course of Instruction.*



(a) (No change.)

(b) A student who misses more than 10% of the required 140 [~~120~~] minutes of class instruction shall not be allowed to take the Commission Standard Competence Test and may not be given a Seller Server Certificate based on his attendance at that session.

(c) (No change.)

(d) Each session must be presented in a continuous block of instruction. Instruction may be interrupted by brief breaks, but they must be limited in number and duration. Time spent in a break or taking the Commission Standard Competence Test shall not be included in the 140-minute [~~120-minute~~] mandatory curriculum attendance requirement.

(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 November 14, 2023.

TRD-202304258

James Person

General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: December 31, 2023

For further information, please call: (512) 206-3230



## SUBCHAPTER E. SELLER SERVER CERTIFICATES

### 16 TAC §50.29

The amendments are proposed pursuant to TABC's rulemaking authority under §5.31 and §106.14(b) of the Alcoholic Beverage Code. Section 5.31 provides that TABC may prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code. Section 106.14(b) provides that TABC shall adopt rules or policies establishing the minimum requirements for approved seller training programs.

§50.29. *Seller Server Certificate Requirements.*

(a) To receive a seller server certificate from a seller server school certified under this chapter, a student must:

(1) complete either a 140-minute [~~120-minute~~] classroom-based course of instruction or an internet-based, self-paced course of instruction;

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

(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 November 14, 2023.

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James Person

General Counsel

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3230



## TITLE 22. EXAMINING BOARDS

### PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

#### CHAPTER 72. BOARD FEES, LICENSE APPLICATIONS, AND RENEWALS

##### 22 TAC §72.21

The Texas Board of Chiropractic Examiners (Board) proposes the repeal of 22 TAC §72.21 (Requirements for Military Spouses). The Board will propose a new §72.21 in a separate rulemaking action.

Recent changes to Texas Occupations Code Chapter 55 (Licensing of Military Service Members, Military Veterans, and Military Spouses) have expanded the methods by which the spouse of an active duty military member may obtain a license to practice chiropractic in Texas or have a license from another jurisdiction recognized by the Board. The proposed new §72.21 will reflect those changes.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. 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 costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal 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).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is an increased ability for a military spouse to practice chiropractic in Texas.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of the current 22 TAC §72.21. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

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

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

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

(4) The proposed repeal does require a decrease in fees paid to the Board.

(5) The proposed repeal does create a new regulation.

(6) The proposed repeal does repeal existing Board rules for an administrative process.

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

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 1801 North Congress Avenue, Suite 10.500, Austin, Texas 78701, via email: [tbce@tbce.state.tx.us](mailto:tbce@tbce.state.tx.us); or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register*. Please include the rule name and number in the subject line of any comments submitted by email. Also, please note the new email address above for submitting comments to the Board.

This repeal is proposed under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic), and §§55.002 - 55.006, and 55.009 (which require the Board to adopt rules relating to alternative licensing methods for military members, veterans, and military spouses).

No other statutes or rules are affected by this proposed repeal.

§72.21. *Requirements for Military Spouses.*

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

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

TRD-202304243

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: December 31, 2023

For further information, please call: (512) 305-6700



## 22 TAC §72.21

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §72.21 (Requirements for Military Spouses). The current §72.21 is being repealed in a separate rulemaking action.

Recent changes to Texas Occupations Code Chapter 55 (Licensing of Military Service Members, Military Veterans, and Military Spouses) have expanded the methods by which the spouse of an active duty military member may obtain a license to practice chiropractic in Texas or have a license from another jurisdiction recognized by the Board. This proposed new §72.21 reflects those changes and delineates the four methods.

In general, the requirements are: First, a military spouse who is licensed in good standing in another jurisdiction may obtain a Board license within 30 days by providing written notice to the Board along with proof of residency.

Second, a military spouse who previously held a now-expired Texas license but currently has a license from another jurisdiction may be issued a new license by following the application requirements of §77.2 (License Application).

Third, a military spouse who has never held a license in Texas or in any other jurisdiction may nonetheless be issued a license if the spouse can demonstrate professional competency through other means that are satisfactory to the Board's executive director; the spouse will still be required to pass professional examinations.

And fourth, a military spouse may practice chiropractic in Texas without obtaining a Board license if the spouse holds a license in good standing in another jurisdiction, notifies the Board, provides proof of residency, and submits a copy of the military member's military identification card.

The proposed rule also provides an administrative process for appealing a denial of a license or authority to practice under these four methods, and for waiving of Board application fees.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. 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 costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule 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).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is an increased ability for a military spouse to practice chiropractic in Texas.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §72.21. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

- (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 Board.
- (4) The proposed rule does require a decrease in fees paid to the Board.
- (5) The proposed rule does create a new regulation.
- (6) The proposal does repeal existing Board rules for an administrative process.
- (7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.
- (8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 1801 North Congress Avenue, Suite 10.500, Austin, Texas 78701, via email: [tbce@tbce.state.tx.us](mailto:tbce@tbce.state.tx.us); or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register*. Please include the rule name and number in the

subject line of any comments submitted by email. Also, please note the new email address above for submitting comments to the Board.

The rule is proposed under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic), and §§55.002 - 55.006, and 55.009 (which require the Board to adopt rules relating to alternative licensing methods for military members, veterans, and military spouses).

No other statutes or rules are affected by this proposed rule.

§72.21. Requirements for Military Spouses.

(a) This section applies to an individual who is the spouse of an active duty member of the United States armed forces (military member).

(b) This section states licensing requirements established under Texas Occupations Code Chapter 55 (Licensing of Military Service Members, Military Veterans, and Military Spouses); this section does not modify any rights provided under federal law.

(c) The spouse of a military member may obtain a Texas license from the Board by other than the process required by §72.2 of this title (relating to License Application) of this chapter or have a license from another jurisdiction recognized by the Board in one of four ways:

(1) The spouse of a military member may be issued a license to practice chiropractic in Texas if the spouse is currently licensed in good standing in a jurisdiction with licensing requirements substantially similar to Texas Occupations Code Chapter 201.

(A) Before issuing a license to practice chiropractic under this paragraph, the spouse of a military member shall provide to the Board:

(i) written notification of the intent to practice chiropractic in Texas; and

(ii) proof of residency in Texas, including the military member's permanent change of duty station orders.

(B) Not later than the 10th day after the spouse of a military member provides the Board with the information required under subparagraph (A) of this paragraph, the Board shall verify if the spouse is licensed in good standing in another jurisdiction.

(C) Not later than the 30th day after the spouse of a military member provides the Board with the information required under subparagraph (A) of this paragraph, the Board shall issue a license if the information satisfies the Board.

(D) If the Board approves a license under subparagraph (A) of this paragraph, the license shall be valid for a period the same as any biennial license or 12 months from the date of issuance, whichever is longer.

(2) The Board may issue a license to the spouse of a military member who previously held a Texas license that expired while the spouse and the military member lived in another state within the five years preceding the new application date, and who currently holds a license in good standing in a jurisdiction with substantially similar licensing requirements to Texas Occupations Code Chapter 201. The spouse of a military member seeking a license under this subsection shall comply with the application requirements of §77.2 of this title (relating to License Application) of this chapter.

(3) The spouse of a military member who has never held a license in Texas or any other jurisdiction may apply for a license by

showing professional competency by other means (other than examination results), to the satisfaction of the executive director, through verified military service, training, or education.

(4) The spouse of a military member may practice chiropractic in Texas without obtaining a license from the Board if the spouse currently holds a license in good standing from another jurisdiction with licensing requirements substantially similar to those in Texas Occupations Code Chapter 201.

(A) The spouse of a military member seeking to practice chiropractic in Texas under this paragraph shall provide the Board with:

(i) written notification of the intent to practice chiropractic in Texas; and

(ii) proof of residency in Texas, including the military member's permanent change of duty station orders; and

(iii) a copy of the military member's current military identification card.

(B) Not later than the 30th day after the spouse of a military member provides the Board with the information required under subparagraph (A) of this paragraph, the Board shall notify the spouse of the spouse's authority to practice chiropractic in Texas.

(C) The spouse of a military member who practices chiropractic under this paragraph may do so only for the time the military member is permanently stationed in Texas but not to exceed three years.

(D) In the event of a divorce or a similar event, the spouse may continue to practice chiropractic in Texas under this paragraph until the third anniversary of the date the spouse received the confirmation described in subparagraph (B) of this paragraph.

(d) The Board shall notify in writing all holders of licenses issued under this section of the requirements to renew the license with the Board.

(e) The spouse of a military member practicing in Texas under this section shall comply with all statutes and Board rules relating to chiropractic practice and are subject to disciplinary action by the Board.

(f) The Board shall exempt the spouse of a military member eligible for a license or the authority to practice under this section from application and exam fees.

(g) The spouse of a military member seeking a license or the authority to practice under this section shall undergo a criminal history background check.

(h) The Board shall maintain and update a list of jurisdictions with substantially similar licensing requirements as Texas Occupations Code Chapter 201.

(i) If the Board administratively denies an application for a license or the authority to practice under this section, an applicant may appeal the decision to the full Board.

(j) If the full Board denies an application for a license or the authority to practice under this section, the applicant may request a hearing at the State Office of Administrative Hearings.

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

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

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Christopher Burnett  
General Counsel  
Texas Board of Chiropractic Examiners  
Earliest possible date of adoption: December 31, 2023  
For further information, please call: (512) 305-6700



## 22 TAC §72.22

The Texas Board of Chiropractic Examiners (Board) proposes the repeal of 22 TAC §72.22 (Requirements for Military Members and Veterans). The Board will propose a new §72.22 in a separate rulemaking action.

Recent changes to Texas Occupations Code Chapter 55 (Licensing of Military Service Members, Military Veterans, and Military Spouses) have expanded the methods by which an active duty military member or veteran may obtain a license to practice chiropractic in Texas or have a license from another jurisdiction recognized by the Board. The proposed new §72.21 will reflect those changes.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rulemaking is in effect there will be no fiscal implications for state or local government. 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 costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal 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).

Mr. Fortner has determined that for each year of the first five years the proposed rulemaking will be in effect the public benefit is an increased ability for a military member or veteran to practice chiropractic in Texas.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal 22 TAC §72.21. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

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

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 1801 North Congress Avenue, Suite 10.500, Austin, Texas 78701, via email: [tbce@tbce.state.tx.us](mailto:tbce@tbce.state.tx.us); or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register*. Please include the rule name and number in the subject line of any comments submitted by email. Also, please note the new email address above for submitting comments to the Board.

The repeal is proposed under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic), and §§55.002 - 55.006, and 55.009 (which require the Board to adopt rules relating to alternative licensing methods for military members, veterans, and military spouses).

No other statutes or rules are affected by this proposed repeal.

*§72.22. Requirements for Military Members and Veterans.*

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

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

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Christopher Burnett  
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Texas Board of Chiropractic Examiners  
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For further information, please call: (512) 305-6700



## 22 TAC §72.22

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §72.22 (Requirements for Military Members and Veterans). The current §72.22 is being repealed in a separate rulemaking action.

Recent changes to Texas Occupations Code Chapter 55 (Licensing of Military Service Members, Military Veterans, and Military Spouses) have expanded the methods by which an active duty military member or veteran may obtain a license to practice chiropractic in Texas or have a license from another jurisdiction recognized by the Board. This proposed new §72.21 reflects those changes and delineates the four methods.

In general, the requirements are: First, a military member or veteran who is licensed in good standing in another jurisdiction may obtain a Board license within 30 days by providing written notice to the Board along with proof of residency.

Second, a military member or veteran who previously held a now-expired Texas license but currently has a license from another jurisdiction may be issued a new license by following the application requirements of §77.2 (License Application).

Third, a military member or veteran spouse who has never held a license in Texas or in any other jurisdiction may nonetheless be issued a license if the military member or veteran spouse can demonstrate professional competency through other means that are satisfactory to the Board's executive director; the military member or veteran will still be required to pass professional examinations.

And fourth, a military member only may practice chiropractic in Texas without obtaining a Board license if the military member holds a license in good standing in another jurisdiction, notifies the Board, provides proof of residency, and submits a copy of the military member's military identification card.

The proposed rule also provides an administrative process for appealing a denial of a license or authority to practice under these four methods, and for waiving of Board application fees.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. 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 costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule 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).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is an increased ability for a military spouse to practice chiropractic in Texas.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §72.21. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

- (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 Board.
- (4) The proposed rule does require a decrease in fees paid to the Board.
- (5) The proposed rule does create a new regulation.
- (6) The proposal does repeal existing Board rules for an administrative process.
- (7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.
- (8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 1801 North Congress Avenue, Suite 10.500, Austin, Texas 78701, via email: [tbce@tbce.state.tx.us](mailto:tbce@tbce.state.tx.us); or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register*. Please include the rule name and number in the subject line of any comments submitted by email. Also, please note the new email address above for submitting comments to the Board.

The rule is proposed under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic),

and §§55.002 - 55.006, and 55.009 (which require the Board to adopt rules relating to alternative licensing methods for military members, veterans, and military spouses).

No other statutes or rules are affected by this proposed rule.

§72.22. Requirements for Military Members and Veterans.

(a) This section applies to an individual who is an active duty member of the United States armed forces (military member) or a veteran.

(b) This section states licensing requirements established under Texas Occupations Code Chapter 55 (Licensing of Military Service Members, Military Veterans, and Military Spouses); this section does not modify any rights provided under federal law.

(c) A military member may obtain a Texas license from the Board by other than the process required by §72.2 of this chapter (relating to License Application) or have a license from another jurisdiction recognized by the Board in one of four ways.

(1) A military member or veteran may be issued a license to practice chiropractic in Texas if the military member or veteran is currently licensed in good standing in a jurisdiction with licensing requirements substantially similar to Texas Occupations Code Chapter 201.

(A) Before practicing chiropractic under paragraph (1) of this subsection, a military member or veteran shall provide to the Board:

(i) written notification of the intent to practice chiropractic in Texas; and

(ii) proof of residency in Texas, including the member's permanent change of duty station orders.

(B) Not later than the 10th day after a military member or veteran provides the Board with the information required under subparagraph (A) of this paragraph, the Board shall verify if the military member or veteran is licensed in good standing in another jurisdiction.

(C) Not later than the 30th day after a military member or veteran provides the Board with the information required under subparagraph (A) of this paragraph, the Board shall issue a license if the information satisfies the Board.

(D) If the Board approves a license under this section, the license shall be valid for a period the same as any biennial license or 12 months from the date of issuance, whichever is longer.

(2) The Board may issue a license to a military member or veteran who previously held a Texas license that expired while the military member or veteran lived in another state for at least six months within the five years preceding the application date, and the military. A military member or veteran seeking a license under this subsection shall comply with the application requirements of §77.2 of this chapter (relating to License Application).

(3) A military member or veteran who has never held a license in Texas or any other jurisdiction may apply for a license by showing professional competency by other means (other than examination results), to the satisfaction of the executive director, through verified military service, training, or education.

(4) A military member only may practice chiropractic in Texas without obtaining a license from the Board if the military member currently holds a license in good standing from another jurisdiction with licensing requirements substantially similar to those in Texas Occupations Code Chapter 201.

(A) A military member seeking the authority to practice chiropractic in Texas under paragraph (4) of this subsection shall provide the Board with:

(i) written notification of the intent to practice chiropractic in Texas; and

(ii) proof of residency in Texas, including the member's permanent change of duty station orders; and

(iii) a copy of the military member's current active duty military identification card.

(B) Not later than the 30th day after a military member provides the Board with the information required under subparagraph (A) of this paragraph, the Board shall notify the military member that the member has the authority to practice chiropractic in Texas.

(d) The Board shall notify in writing all holders of licenses issued under this section of the requirements to renew the license with the Board.

(e) The Board shall maintain and update a list of jurisdictions with substantially similar licensing requirements as Texas Occupations Code Chapter 201.

(f) The Board shall exempt a military member or veteran eligible for a license under this section from application and exam fees.

(g) The Board shall exempt a military member or veteran from any fee or penalty for failing to timely renew a license if the failure was due to active duty military service.

(h) A military member or veteran seeking a license or authority to practice under this section shall undergo a criminal history background check.

(i) A military member or veteran practicing in Texas under this section shall comply with all statutes and Board rules relating to chiropractic practice and is subject to disciplinary action by the Board.

(j) If the Board administratively denies an application for a license under subsection (c) of this section, an applicant may appeal the decision to the full Board.

(k) If the full Board denies an application for a license under subsection (c) of this section, the applicant may request a hearing at the State Office of Administrative Hearings.

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

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

TRD-202304246

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: December 31, 2023

For further information, please call: (512) 305-6700



## PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

### CHAPTER 341. LICENSE RENEWAL

#### 22 TAC §341.3

The Texas Board of Physical Therapy Examiners proposes amending 22 TAC §341.3. Qualifying Continuing Competence Activities. The amendments are proposed in order to clarify certain activities that qualify for continuing competence units (CCUs).

The amendments broaden the category of residencies and fellowships by allowing completion of a residency or fellowship accredited by an entity other than the American Board of Physical Therapy Residency and Fellowship Education (ABPTRFE) and mentorship of a resident or fellow in an approved program to qualify for CCUs, and requires the Board to maintain a list of approved residencies and fellowships. Additionally, the amendments eliminate oPTion as a qualifying activity as the Federation of State Boards of Physical Therapy (FSBPT) has discontinued the self-assessment tool.

#### Fiscal Note

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy & Occupational Therapy Examiners, has determined that for the first five-year period the amendment is in effect there would be no loss of revenue, and there would be no fiscal implication to units of local government as a result of enforcing or administering the rules.

#### Public Benefits and Costs

Mr. Harper has also determined that for the first five-year period the amendment is in effect the public benefit will be to ensure that licensees are afforded quality opportunities to engage in continuing competence activities. There will be no economic cost to licensees.

#### Local Employment Economic Impact Statement

The amendment is not anticipated to impact a local economy, so a local employment economic impact statement is not required.

#### Small and Micro-Businesses and Rural Communities Impact

Mr. Harper has determined that there will be no costs or adverse economic effects to small or micro-businesses or rural communities; therefore, an economic impact statement or regulatory flexibility analysis is not required.

#### Government Growth Impact Statement

During the first five-year period this amendment is in effect, the impact on government growth is as follows:

(1) The proposed rule amendment will neither create nor eliminate a government program.

(2) The proposed rule amendment will neither create new employee positions nor eliminate existing employee positions.

(3) The proposed rule amendment will neither increase nor decrease future legislative appropriations to the agency.

(4) The proposed rule amendment will neither require an increase nor a decrease in fees paid to the agency.

(5) The proposed amendment will revise an existing rule by clarifying activities that qualify for continuing competence units (CCUs).

(6) The proposed rule amendment will neither repeal nor limit an existing regulation.

(7) The proposed rule amendment will neither increase nor decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule amendment will neither positively nor adversely affect this state's economy.

**Takings Impact Assessment** The proposed rule amendment will not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

#### Requirement for Rule Increasing Costs to Regulated Persons

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to this proposed rule because the amendments will not increase costs to regulated persons.

#### Public Comment

Comments on the proposed amendments may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 1801 Congress Ave, Suite 10.900, Austin, Texas 78701; email: karen@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register*.

#### Statutory Authority

The amendment is proposed under Texas Occupation Code §453.102, which authorizes the board to adopt rules necessary to implement chapter 453.

#### Cross-reference to Statute

The proposed amendment implements provisions in Sec. 453.254, Occupations Code that pertains to continuing competence.

#### §341.3. *Qualifying Continuing Competence Activities.*

Licenses may select from a variety of activities to fulfill the requirements for continuing competence. These activities include the following:

- (1) - (4) (No change.)
- (5) Advanced Training, Certification, and Recognition.
  - (A) - (B) (No change.)

(C) Residency or fellowship relevant to physical therapy. The Board will maintain and make available a list of approved residencies and fellowships. [The residency or fellowship must be accredited by the American Board of Physical Therapy Residency and Fellowship Education (ABPTRFE).] This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) The residency or fellowship must be successfully completed within the 24 months prior to the license expiration date.

(ii) Completion of the residency or fellowship is valued at up to 30 CCUs.

(iii) If selected for audit, the licensee must submit a copy of the certificate of graduation indicating completion of the fellowship or residency.

(D) Mentorship of a resident or fellow in an approved [American Board of Physical Therapy Residency and Fellowship Education (ABPTRFE) accredited] residency or fellowship program. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) Mentorship of a resident or fellow for a minimum of 150 hours of 1:1 mentoring is valued at 10 CCUs. The Board will

consider partial credit for those mentors who provide mentorship for only a portion of the residency or fellowship.

(ii) Licensees may submit a maximum of 20 CCUs for this activity.

(iii) If selected for audit, the licensee must submit a copy of a letter from the [~~accredited~~] residency or fellowship program confirming participation as a clinical mentor, with the dates and number of hours served as a clinical mentor.

~~[(E) The self-assessment tool of the Federation of State Boards of Physical Therapy (FSBPT). This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.]~~

~~[(i) Completion of oPtion is valued at 3 CCUs.]~~

~~[(ii) If selected for audit, the licensee must submit a copy of the FSBPT certificate of completion.]~~

(6) - (7) (No change.)

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

Filed with the Office of the Secretary of State on November 15, 2023.

TRD-202304281

Ralph Harper

Executive Director

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: December 31, 2023

For further information, please call: (512) 305-6900



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 1. GENERAL ADMINISTRATION SUBCHAPTER G. NOTICE AND PROCESSING PERIODS FOR PERMIT APPLICATIONS

##### 28 TAC §1.814

The Texas Department of Insurance (TDI) proposes new 28 TAC §1.814, concerning occupational and business permits and licenses for military service members, military veterans, and military spouses. Section 1.814 implements Senate Bill 422, 88th Legislature, 2023, and Chapter 55 of the Occupations Code and aligns TDI's rules with 50 USC §4025a.

**EXPLANATION.** Chapter 55 of the Occupations Code provides for alternative licensing procedures and requirements for military service members, military veterans, and military spouses. Before the passage of SB 422, Occupations Code §55.0041 required licensing agencies to recognize the out-of-state licenses of military spouses. SB 422 amended §55.0041 to also apply to military service members and to incorporate additional changes. The bill also amended Occupations Code §55.004(d) to apply residency rules to military service members and §55.005(a) to require that licensing agencies' processing and issuance of a li-

cense to a military service member, veteran, or spouse be completed within 30 days after application filing.

New §1.814 implements Chapter 55 of the Occupations Code, including §55.0041 as amended by SB 422, by describing the alternative licensing procedures and requirements for license applications by military service members, veterans, and spouses. Under new §1.814, these licensing procedures and requirements apply to all licenses issued by TDI, including the State Fire Marshal's Office. New §1.814 also aligns such procedures and requirements with 50 USC §4025a, which provides for the portability of professional licenses of servicemembers and their spouses.

Proposed subsection (a) of §1.814 provides applicable definitions. Proposed subsection (b) addresses conflicts with other sections in Title 28 of the Administrative Code. Proposed subsection (c) clarifies the applicability of the proposed section. Proposed subsection (d) describes the alternative licensing requirements available to military service members, veterans, and spouses. Proposed subsection (e) provides for extension of the deadline for license renewal and related fee exemption for military service members who hold a Texas license. Proposed subsection (f) provides for exemption from payment of license application and examination fees. Proposed subsection (g) provides for reciprocity for out-of-state licenses for military service members and military spouses, consistent with SB 422. Proposed subsection (h) includes provisions applicable only to military service members and military spouses who are administrators. Proposed subsection (i) provides for expedited licensing procedures. Proposed subsection (j) provides for crediting of a military service member or veteran's military service, training, or education toward apprenticeship requirements or other license requirements. Proposed subsection (k) gives guidance on residency documentation requirements. Proposed subsection (l) provides for TDI's identification of states with licensing requirements that are substantially equivalent to Texas requirements.

Separate proposals amend or repeal sections in Chapters 7, 15, 19, 25, and 34 of Title 28 of the Administrative Code for consistency with the provisions in this section.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Jodie Delgado, director of the Agent and Adjuster Licensing Office, has determined that during each year of the first five years the proposed new section is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the new section, other than that imposed by the statute. Ms. Delgado made this determination because the proposed new section does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed new section.

Ms. Delgado does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed new section is in effect, Ms. Delgado expects that administering and enforcing the proposed section will have the public benefit of ensuring that TDI's rules conform to Occupations Code §55.0041.

Ms. Delgado expects that the proposed new section will not increase the cost of compliance with Occupations Code §55.0041 because it does not impose requirements beyond those in the statute. Occupations Code §55.0041 requires TDI to allow mili-

tary service members and military spouses to engage in a business or occupation in Texas using a current license issued by another state with substantially equivalent licensing requirements. As a result, the cost associated with the proposed new section does not result from its enforcement or administration.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TDI has determined that the proposed new section will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** TDI has determined that this proposal does not impose a possible cost on regulated persons. Even if it did, no additional rule amendments are required under Government Code §2001.0045 because the proposed new section is necessary to implement legislation. The proposed rule implements Occupations Code §55.0041, as amended by SB 422.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TDI has determined that for each year of the first five years that the proposed new section is in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will require a decrease in fees paid to the agency;
- will create a new regulation;
- will not expand or repeal an existing regulation;
- will increase the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

**TAKINGS IMPACT ASSESSMENT.** TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on January 3, 2024. Send your comments to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov) or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov) or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on January 3, 2024. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

**STATUTORY AUTHORITY.** TDI proposes new §1.814 under Occupations Code §§55.002, 55.004(a), 55.0041, 55.007, and 55.008 and Insurance Code §§36.109, 4001.005, and 36.001.



Occupations Code §55.002 requires state agencies to adopt rules to exempt certain military service members from increased fees and penalties for failure to timely renew a license.

Occupations Code §55.004(a) requires state agencies to adopt rules for the issuance of a license to certain military service members, military veterans, and military spouses.

Occupations Code §55.0041, which addresses recognition of out-of-state licenses of military service members and military spouses, requires state agencies to adopt rules to implement the section. In addition, Occupations Code §55.0041(f) authorizes state agencies to adopt rules for the issuance of a license to a military service member or military spouse who receives confirmation from TDI of licensure verification and authorization to engage in the business or occupation under Occupations Code §55.0041.

Occupations Code §55.007, which addresses license eligibility requirements for military service members and military veterans, requires state agencies to adopt rules necessary to implement the section. In addition, Occupations Code §55.007(c) provides that such rules may not apply to certain applicants who hold a restricted license or has an unacceptable criminal history.

Occupations Code §55.008, which addresses apprenticeship requirements for certain applicants with military experience, requires TDI to adopt rules necessary to implement the section.

Insurance Code §36.109, which addresses renewal extension for certain persons performing military service, authorizes the commissioner to adopt rules as necessary to implement the section.

Insurance Code §4001.005 authorizes the commissioner to adopt rules necessary to implement Title 13 of the Insurance Code and to meet minimum requirements of federal law.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 1.814 implements Occupations Code §§55.002 - 55.009.

§1.814. Military Service Member, Military Veteran, and Military Spouse.

(a) Definitions.

(1) The definitions for terms defined in Occupations Code §55.001, concerning Definitions, are applicable to this section, including the terms "military service member," "military veteran," and "military spouse."

(2) for purposes of this section, "license" has the same meaning as "permit," as defined in §1.802 of this title (relating to Definitions), unless the context clearly indicates otherwise, and "licensee" includes anyone who holds a permit issued by the agency.

(b) Conflict. To the extent that provisions in this section conflict with provisions in any other section in this title, this section controls.

(c) Applicability. The provisions in this section apply to all permits as defined in §1.802 of this title, including licenses and certificates of authority for administrators under Chapter 7, Subchapter P of this title (relating to Administrators); surplus lines agents under Chapter 15, Subchapter B of this title (relating to Surplus Lines Agents); insurance professionals under Chapter 19, Subchapter I of this title

(relating to General Provisions Regarding Fees, Applications, and Renewals); and insurance premium finance companies under Chapter 25, Subchapter B of this title (relating to Licensing and Regulation); and licenses issued by the state fire marshal under Chapter 34 of this title (relating to State Fire Marshal).

(d) Alternative licensing requirements. Consistent with Occupations Code §55.004, concerning Alternative Licensing for Military Service Members, Military Veterans, and Military Spouses, an applicant for a license who is a military service member, military veteran, or military spouse may complete the following alternative procedures for licensing:

(1) Resident licensing by reciprocity for military service members and military spouses. An applicant who is a military service member or military spouse and who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license may apply for a Texas resident license as provided in subsection (g) of this section.

(2) Resident licensing by reciprocity for military veterans. An applicant who is a military veteran and who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license may apply for a Texas resident license subject to the applicable qualifications for resident licenses as provided in this title and subject to subsection (f) of this section.

(3) Expired resident licenses. An applicant who is a military service member, military veteran, or military spouse and whose Texas resident license has been expired for fewer than five years preceding the application date may request that TDI waive the examination requirement. An applicant requesting this waiver must submit to the applicable licensing office or division of the agency:

(A) a new license application;

(B) identification indicating that the applicant is a military service member; military veteran; or military dependent, if a military spouse;

(C) evidence that the applicant has completed all required continuing education for the periods the applicant was licensed and paid all fines as required under this title; and

(D) a request for waiver that includes an explanation that justifies waiver of the licensing examination.

(e) License renewal extension and fee exemption.

(1) As specified in Occupations Code §55.003, concerning Extension of License Renewal Deadlines for Military Service Members, a military service member who holds a license is entitled to two additional years to complete any requirements related to the renewal of the license, including continuing education requirements, and to submit a renewal application including the following:

(A) the licensee's name, address, and license number;

(B) the licensee's military identification indicating that the individual is a military service member; and

(C) a statement requesting up to two years of additional time to complete the renewal, including continuing education requirements.

(2) A military service member specified in paragraph (1) of this subsection is exempt from additional fees or penalties required under this title for failure to renew a license in a timely manner, as specified in Occupations Code §55.002, concerning Exemption from Penalty for Failure to Renew License.

(3) A military service member specified in paragraph (1) of this subsection must satisfy the continuing education requirement for which the compliance period has been extended before satisfying the continuing education requirement for any other period.

(4) A military service member serving in a combat theater, as provided for in Insurance Code §36.109, concerning Renewal Extension for Certain Persons Performing Military Service, may apply for an exemption from or an extension of time for meeting license renewal requirements, including continuing education requirements. The licensee must request the exemption or extension before the end of the applicable reporting period and must include:

(A) a copy of the order for active duty status, service in a combat theater, or other positive documentation of military service that will demonstrate that the licensee is prevented from compliance;

(B) a clear request for either an extension or exemption, or both;

(C) a statement indicating whether the request is for an extension or exemption, or both, from continuing education requirements or from license renewal;

(D) the expected duration of the assignment; and

(E) any other information the licensee believes may assist the agency or that the agency requests, on a case-by-case basis.

(f) Fee exemptions.

(1) Consistent with Occupations Code §55.009, concerning License Application and Examination Fees, the following applicants are not required to pay any applicable license application fee or examination fee that is otherwise payable to the agency:

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

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

(2) The fee exemption under paragraph (1) of this subsection does not apply to license renewal application fees.

(3) To qualify for the fee exemption under paragraph (1)(A) of this subsection, the applicant must submit as applicable:

(A) the license application, with a request for waiver of the application fee and examination fee;

(B) identification indicating that the applicant is a military service member or military veteran; and

(C) documentation that the applicant's military service, training, or education substantially meets all the requirements for the license.

(4) To qualify for the fee exemption under paragraph (1)(B) of this subsection, the applicant must submit as applicable:

(A) the license application, with a request for waiver of the application fee and examination fee; and

(B) identification indicating that the applicant is a military service member, military veteran, or military spouse.

(g) Reciprocal licenses for military service members and military spouses.

(1) A military service member or military spouse who is licensed in a state with substantially equivalent requirements to those of Texas is eligible for a Texas resident license while the military service member is stationed at a military installation in Texas.

(2) A license granted under paragraph (1) of this subsection is effective for a period of three years from the date the applicant receives confirmation from the agency of receipt of the items described in paragraph (4)(A) - (C) of this subsection and may not be renewed.

(3) Consistent with 55 USC §4025a, concerning Portability of Professional Licenses of Servicemembers and Their Spouses, if military orders require the military service member to continue to be stationed in Texas past the expiration of the license as described in paragraph (2) of this subsection, the licensee may apply for a new license under paragraph (1) of this subsection. A licensee seeking a new license under this paragraph must submit to the applicable licensing office or division of the agency documentation of the military order or orders requiring that the military service member continue to be stationed in Texas past the license expiration date.

(4) To apply for a license under this subsection, the applicant must provide to the applicable licensing office or division of the agency:

(A) an application notifying the agency of the applicant's intent to operate in Texas;

(B) proof of the applicant's residency in Texas and a copy of the applicant's military identification card; and

(C) evidence of good standing from the state with substantially equivalent requirements to the requirements of this state.

(5) Within 30 days after the applicant's submission of the items described in paragraph (4) of this subsection, the agency will verify the applicant's good standing status described in paragraph (4)(C) of this subsection.

(h) Administrators.

(1) A military service member or military spouse who is licensed as an administrator in a state with substantially equivalent requirements as those found in §7.1604 of this title (relating to Application for Certificate of Authority) and Insurance Code Chapter 4151, concerning Third-Party Administrators, may engage as an administrator while the military service member is stationed at a military installation in Texas.

(2) A military service member or military spouse seeking to engage as an administrator under this subsection must:

(A) submit an application notifying the agency of the military service member or military spouse's intent to engage as an administrator in Texas;

(B) submit to the agency proof of the applicant's residency in Texas and a copy of the applicant's military identification card; and

(C) show evidence of good standing from a jurisdiction with substantially equivalent requirements as those found in §7.1604 of this title and Insurance Code Chapter 4151.

(3) Notwithstanding §7.1604 of this title, a military service member or military spouse seeking to engage as an administrator under this subsection will not be assessed any application fees under that section.

(4) A military service member or military spouse authorized to engage as an administrator must comply with and adhere to all other laws and rules applicable to administrators.

(i) Expedited license procedure. Within 30 days of the filing of a license application by a military service member, military veteran, or military spouse, the agency will process the application and issue the license to an applicant who qualifies for the license under subsection (d) of this section, subject to other qualification requirements under this title.

(j) Credit for military service, training, or education.

(1) An applicant who is a military service member or military veteran may submit to the agency documentation of the applicant's military service, training, or education. Such military service, training, or education, after verification by the agency, will be credited to license requirements other than examination requirements. This subsection will not apply to an applicant who holds a restricted license issued by another jurisdiction or who has an unacceptable criminal history.

(2) If an apprenticeship is required for the license, an applicant who is a military service member or military veteran may submit to the agency documentation of the applicant's military service, training, or education that is relevant to the occupation. Such military service, training, or education, after verification by the agency, will be credited to the apprenticeship requirements.

(k) Residency. For an application for a license that has a residency requirement for license eligibility, an applicant who is a military service member or military spouse may establish residency for the purposes of this section by providing the applicable licensing office or division of the agency with a copy of the permanent change of station order or other military order requiring the military service member to be stationed in Texas, or any other documentation of residency for license eligibility permitted under this title.

(l) States with substantially equivalent requirements. For the purposes of this section, the agency will work with non-Texas jurisdictions to:

(1) Identify, with respect to each type of license issued by the agency, the jurisdictions that have licensing requirements that are substantially equivalent to the requirements for the license in Texas; and

(2) Verify that a military service member or military spouse is licensed in good standing in a jurisdiction described in paragraph (1) of this subsection.

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

Filed with the Office of the Secretary of State on November 15, 2023.

TRD-202304285

Jessica Barta

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: December 31, 2023

For further information, please call: (512) 676-6555



## CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

### SUBCHAPTER P. ADMINISTRATORS

#### 28 TAC §7.1603

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §7.1603, concerning the certificate of authority required for administrators. The amendments to §7.1603 implement Senate Bill 422, 88th Legislature, 2023, which amended Occupations Code §§55.004(d), 55.0041, and 55.005(a).

EXPLANATION. Chapter 55 of the Occupations Code provides for alternative licensing procedures and requirements for military service members, military veterans, and military spouses. Before the passage of SB 422, Occupations Code §55.0041 required licensing agencies to recognize the out-of-state licenses of military spouses. SB 422 amended §55.0041 to also apply to military service members and to incorporate additional changes.

As part of the implementation of SB 422, TDI has separately proposed new 28 TAC §1.814, which provides alternative licensing procedures and requirements for license applications by military service members, military veterans, and military spouses, consistent with Occupations Code Chapter 55 and 50 USC §4025a. New §1.814 applies to all licenses, permits, certifications, and other authorizations issued by TDI, including certificates of authority for administrators.

Section 7.1603 requires that persons holding themselves out as administrators must hold a certificate of authority under Insurance Code Chapter 4151. Subsections (a), (c), (d), (e), and (f) currently include requirements for military spouses seeking authorization to or who are currently authorized in other states to engage as an administrator. This proposal will remove these provisions, including part of subsection (a), and subsections (c), (d), (e) and (f), which apply to military spouses, because they are made redundant by proposed new §1.814. Amendments also insert the titles of cited Insurance Code provisions in subsection (a).

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Jodie Delgado, director of the Agent and Adjuster Licensing Office, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendments other than that imposed by the statute. Ms. Delgado made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Delgado does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amended section is in effect, Ms. Delgado expects that administering and enforcing the proposed amendments will have the public benefits of eliminating redundant provisions and ensuring that TDI's rules conform to Occupations Code §55.0041 in a consistent way.

Ms. Delgado expects that the proposed amendments will not increase the cost of compliance because they do not create or impose any requirements.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amended section will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons. There are no additional costs as a result of this proposal because it only removes existing regulations made redundant by new regulations. No additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will limit an existing regulation;
- will decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on January 3, 2024. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on January 3, 2024. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes amendments to §7.1603 under Occupations Code §55.0041(e) and Insurance Code §36.001.

Occupations Code §55.0041(e), which addresses recognition of out-of-state licenses of military service members and military spouses, requires state agencies to adopt rules to implement the section.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Amendments to §7.1603 implement Occupations Code §§55.004(d), 55.0041, and 55.005(a).

§7.1603. *Certificate of Authority Required.*

(a) Unless a person meets an exemption under Insurance Code §§4151.002, concerning Exemptions, 4151.004, concerning Applicability to Certain Insurers and Health Maintenance Organizations, or 4151.0021, concerning Applicability to Certain Processing Agents, a person acting as or holding themselves out as an administrator must hold a certificate of authority under Insurance Code Chapter 4151, concerning Third-Party Administrators. [A military spouse who meets the criteria described in subsection (e) of this section is eligible to apply for a temporary certificate of authority.]

(b) An administrator contractor and an administrator subcontractor must hold a certificate of authority under Insurance Code Chapter 4151.

~~[(c) A military spouse who is licensed as an administrator in a state with substantially equivalent requirements as those found in §7.1604 of this title (relating to Application for Certificate of Authority) and Insurance Code Chapter 4151 may engage as an administrator while the military service member to whom the military spouse is married is stationed at a military installation in this state for a period of three years from the date the spouse receives the confirmation described by subsection (d) of this section.]~~

~~[(d) A military spouse seeking to engage as an administrator must:]~~

~~[(1) submit an application notifying TDI of the military spouse's intent to engage as an administrator in Texas;]~~

~~[(2) submit to TDI proof of the spouse's residency in Texas and a copy of the spouse's military identification card; and]~~

~~[(3) show evidence of good standing from a jurisdiction with substantially equivalent requirements as those found in §7.1604 of this title and Insurance Code Chapter 4151.]~~

~~[(e) Notwithstanding §7.1604 of this title, a military spouse seeking to engage as an administrator will not be assessed any application fees under that section.]~~

~~[(f) A military spouse authorized to engage as an administrator must comply and adhere to all other laws and rules applicable to administrators.]~~

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

Filed with the Office of the Secretary of State on November 15, 2023.

TRD-202304286

Jessica Barta

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: December 31, 2023

For further information, please call: (512) 676-6555



## CHAPTER 15. SURPLUS LINES INSURANCE SUBCHAPTER B. SURPLUS LINES AGENTS

### 28 TAC §15.101

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §15.101, concerning the licensing of surplus lines agents. Amendments to §15.101 implement Senate Bill 422, 88th Legislature, 2023.

**EXPLANATION.** Chapter 55 of the Occupations Code provides for alternative licensing procedures and requirements for military service members, military veterans, and military spouses. Before the passage of SB 422, Occupations Code §55.0041 required licensing agencies to recognize the out-of-state licenses of military spouses. SB 422 amended §55.0041 to also apply to military service members and to incorporate additional changes.

As part of the implementation of SB 422, TDI has separately proposed new 28 TAC §1.814, which provides alternative licensing procedures and requirements for license applications by military service members, military veterans, and military spouses, consistent with Occupations Code Chapter 55 and 50 USC §4025a. Proposed new §1.814 applies to all licenses, permits, certifications, and other authorizations issued by TDI, including surplus lines agent licenses.

Section 15.101 addresses requirements for the licensing of surplus lines agents, and subsection (g) provides licensing requirements for military spouses. Proposed amendments remove subsection (g), which is made redundant by proposed new §1.814, and redesignate the subsections that follow subsection (g) to reflect its removal. In addition, amendments in subsections (b), (e), and (f) and redesignated subsections (g) and (h) add the titles of cited Insurance Code sections, and an amendment to subsection (f) revises the capitalization of the word "commissioner," for consistency with current TDI rule drafting style.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Jodie Delgado, director of the Agent and Adjuster Licensing Office, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendments other than that imposed by the statute. Ms. Delgado made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Delgado does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed amended section is in effect, Ms. Delgado expects that administering and enforcing the proposed amendments will have the public benefits of eliminating a redundant provision and ensuring that TDI's rules conform to Occupations Code §55.0041 in a consistent way.

Ms. Delgado expects that the proposed amendments will not increase the cost of compliance because the amendments do not create or impose any requirements.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TDI has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** TDI has determined that this proposal does not impose a possible cost on regulated persons. There are no

additional costs as a result of this proposal because it only removes existing regulations made redundant by new regulations. No additional rule amendments are required under Government Code §2001.0045.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will limit an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

**TAKINGS IMPACT ASSESSMENT.** TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on January 3, 2024. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on January 3, 2024. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

**STATUTORY AUTHORITY.** TDI proposes amendments to §15.101 under Occupations Code §55.0041(e) and Insurance Code §36.001.

Occupations Code §55.0041, which addresses recognition of out-of-state licenses of military service members and military spouses, requires in subsection (e) that state agencies adopt rules to implement the section.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

**CROSS-REFERENCE TO STATUTE.** The amendment of §15.101 implements Occupations Code §§55.004(d), 55.0041, and 55.005(a).

*§15.101. Licensing of Surplus Lines Agents.*

(a) Persons performing any of the following surplus lines insurance activities are required to have a surplus lines agent license:

(1) supervising unlicensed staff engaged in activities described in subsection (b) of this section, although unlicensed intermediary supervisors may supervise unlicensed staff engaging in these activities if the ultimate supervisor is licensed;

(2) negotiating, soliciting, effecting, procuring, or binding surplus lines insurance contracts for clients or offering advice, counsel, opinions, or explanations of surplus lines insurance products to agents or clients beyond the scope of underwriting policies or contracts, except for a general lines property and casualty agent making a referral of surplus lines business to a surplus lines agent that then completes the surplus lines transaction; or

(3) receiving any direct commission or variance in compensation based on the volume of surplus lines premiums taken and received from, or as a result of, another person selling, soliciting, binding, effecting, or procuring surplus lines insurance policies, contracts, or coverages, except for a general lines property and casualty agent making a referral of surplus lines business to a surplus lines agent that then completes the surplus lines transaction.

(b) The following activities, if supervised by a surplus lines agent, do not require a surplus lines agent license if the employee does not receive any direct commission from selling, soliciting, binding, effecting, or procuring insurance policies, contracts, or coverages, and the employee's compensation is not varied by the volume of premiums taken and received:

(1) full-time clerical and administrative services, including, but not limited to, the incidental taking of information from clients; receipt of premiums in the office of a licensed agent; or transmitting to clients, as directed by a licensed surplus lines agent, prepared marketing materials or other prepared information and materials including, without limitation, invoices and evidences of coverage;

(2) contacting clients to obtain or confirm information necessary to process an application for surplus lines insurance so long as the contact does not involve any activities for which a license would be required under subsection (a)(2) of this section;

(3) performing the task of underwriting any insurance policy, contract, or coverage, including and without limitation, pricing of the policy or contract; or

(4) contacting clients, insureds, agents, other persons, and insurers to gather and transmit information regarding claims and losses under the policy to the extent the contact does not require a licensed adjuster as set forth under Insurance Code Chapter 4101, concerning Insurance Adjusters.

(c) This section must not be construed to prohibit distribution of agency profits to unlicensed persons, including shareholders, partners, and employees.

(d) Before TDI issues a surplus lines agent license, the applicant must submit the following:

(1) an appropriate, fully completed written application; and

(2) the fee specified by §19.801 and §19.802 of this title (relating to General Provisions and Amount of Fees, respectively).

(e) Texas-resident applicants, and nonresident applicants who do not hold a surplus lines license in their state of residence or whose state of residence does not license Texas residents on a reciprocal basis as determined by TDI, must meet all licensing requirements set forth in Insurance Code Chapter 981, concerning Surplus Lines Insurance.

Nonresident applicants under this section must also comply with Insurance Code §4056.051, concerning Application for Nonresident Agent License; Criminal History.

(f) Nonresident applicants who hold a surplus lines agent license in good standing in the agent's state of residence and meet the requirements of Insurance Code §4056.052, concerning Issuance of License to Nonresident Agent Licensed in Other State, must meet all the licensing requirements of Insurance Code Chapter 981 to the extent that the requirements are not waived by the commissioner [Commissioner] under Insurance Code §4056.055, concerning Waiver of Requirements for Nonresident Agent Licensed in Other State or Jurisdiction.

~~[(g) Military spouses who are licensed in a state with substantially equivalent requirements to those of this state are eligible for a license while the military service member to whom the military spouse is married is stationed at a military installation in this state. This license is effective for a period of three years from the date the spouse receives the confirmation described by paragraph (1) of this subsection.]~~

~~[(1) The military spouse must:]~~

~~[(A) submit an application notifying TDI of the military spouse's intent to operate under the license in Texas;]~~

~~[(B) submit to TDI proof of the military spouse's residency in Texas and a copy of the spouse's military identification card; and]~~

~~[(C) show evidence of good standing from the jurisdiction with substantially equivalent requirements to the requirements of this state.]~~

~~[(2) Notwithstanding subsection (d)(2) of this section and §19.801 and §19.802 of this title, a military spouse will not be assessed any application fees under those sections.]~~

~~[(g) [(h)] Notwithstanding any other subsection of this section, nonresident applicants are not required to obtain a general property and casualty agent license if they meet the requirements of Insurance Code §981.203(a-1), concerning Qualifications for Surplus Lines License.~~

~~[(h) [(i)] Each surplus lines agent license issued to an agent will be valid for a term as established under Insurance Code §4003.001, concerning License Expiration, and Chapter 19, Subchapter I of this title (relating to General Provisions Regarding Fees, Applications, and Renewals). The license may be renewed by submitting a renewal application and a nonrefundable license fee as specified by §19.801 and §19.802 of this title.~~

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

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Jessica Barta

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6555



## CHAPTER 19. LICENSING AND REGULATION OF INSURANCE PROFESSIONALS

The Texas Department of Insurance (TDI) proposes to repeal §19.803 and to amend §19.810 in Subchapter I of 28 TAC Chapter 19 and to amend §19.1004 in Subchapter K of 28 TAC Chapter 19. These sections concern the licensing of insurance professionals. The proposed repeal and amendments implement Senate Bill 422, 88th Legislature, 2023, which amended Occupations Code §§55.004(d), 55.0041, and 55.005(a).

**EXPLANATION.** Chapter 55 of the Occupations Code provides for alternative licensing procedures and requirements for military service members, military veterans, and military spouses. Before the passage of SB 422, Occupations Code §55.0041 required licensing agencies to recognize the out-of-state licenses of military spouses. SB 422 amended §55.0041 to also apply to military service members and to incorporate additional changes.

As part of the implementation of SB 422, TDI has separately proposed new 28 TAC §1.814, which provides alternative licensing procedures and requirements for license applications by military service members, military veterans, and military spouses, consistent with Occupations Code Chapter 55 and 50 USC §4025a. Proposed new §1.814 applies to all licenses, permits, certifications, and other authorizations issued by TDI, including insurance professional licenses.

The proposed amendments are described in the following paragraphs.

**Section 19.803.** The proposal repeals §19.803, which provides procedures for licensing of military service members, military veterans, and military spouses, because this section will be superseded by new 28 TAC §1.814.

**Section 19.810.** The amendments to §19.810 remove outdated effective date references in subsection (a) and replace cross-references to §19.803 in subsection (b) with cross-references to new 28 TAC §1.814. The amendments also correct erroneous cross-references in subsection (f), correct a grammatical error in subsection (h)(1), and insert the titles of cited Insurance Code and Administrative Code provisions in subsections (a), (c)(2), and (h)(1).

**Section 19.1004.** The amendments to §19.1004 remove subsection (f), which provides for licensing-related exemptions and extensions for military service members. Subsection (f) is superseded by new 28 TAC §1.814. Amendments also update cross-references to subsection (f) and redesignate the subsections that follow subsection (f) to reflect its removal. In addition, amendments insert the titles of cited Insurance Code and Administrative Code provisions in subsection (b) and redesignated subsections (f) and (g).

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Jodie Delgado, director of the Agent and Adjuster Licensing Office, has determined that during each year of the first five years the sections as proposed are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the proposed sections, other than that imposed by the statute. Ms. Delgado made this determination because the sections as proposed do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amended sections.

Ms. Delgado does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the sections as proposed are in effect, Ms. Delgado

expects that administering and enforcing the proposed sections will have the public benefits of updating and eliminating redundant provisions and ensuring that TDI's rules conform to Chapter 55 of the Occupations Code in a consistent way.

Ms. Delgado expects that the sections as proposed will not increase the cost of compliance because the proposed sections do not create or impose any requirements.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TDI has determined that the sections as proposed will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** TDI has determined that this proposal does not impose a possible cost on regulated persons. There are no additional costs as a result of this proposal because it only removes existing regulations made redundant by new regulations. No additional rule amendments are required under Government Code §2001.0045.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TDI has determined that for each year of the first five years that the sections as proposed are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will limit and repeal existing regulations;
- will not decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

**TAKINGS IMPACT ASSESSMENT.** TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on January 3, 2024. Send your comments to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov) or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov) or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on January 3, 2024. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

# SUBCHAPTER I. GENERAL PROVISIONS REGARDING FEES, APPLICATIONS, AND RENEWALS

## 28 TAC §19.803

STATUTORY AUTHORITY. TDI proposes the repeal of §19.803 under Occupations Code §§55.002, 55.004(a), 55.0041, 55.007, and 55.008 and Insurance Code §§36.109, 4001.005, and 36.001.

Occupations Code §55.002 requires state agencies to adopt rules to exempt certain military service members from increased fees and penalties for failure to timely renew a license.

Occupations Code §55.004(a) requires state agencies to adopt rules for the issuance of a license to certain military service members, military veterans, and military spouses.

Occupations Code §55.0041, which addresses recognition of out-of-state licenses of military service members and military spouses, requires state agencies to adopt rules to implement the section. In addition, Occupations Code §55.0041(f) authorizes state agencies to adopt rules for the issuance of a license to a military service member or military spouse who provides confirmation from TDI of licensure verification and authorization to engage in the business or occupation under Occupations Code §55.0041.

Occupations Code §55.007, which addresses license eligibility requirements for military service members and military veterans, requires state agencies to adopt rules necessary to implement the section.

Occupations Code §55.008, which addresses apprenticeship requirements for certain applicants with military experience, requires state agencies to adopt rules necessary to implement the section.

Insurance Code §36.109, which addresses renewal extension for certain persons performing military service, authorizes the commissioner to adopt rules as necessary to implement the section.

Insurance Code §4001.005 authorizes the commissioner to adopt rules necessary to implement Title 13 of the Insurance Code and to meet minimum requirements of federal law.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The proposed repeal of §19.803 implements Occupations Code §§55.002 - 55.009.

§19.803. *Military Service Member, Military Veteran, and Military Spouse.*

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

Filed with the Office of the Secretary of State on November 15, 2023.

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Jessica Barta  
General Counsel  
Texas Department of Insurance  
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## 28 TAC §19.810

STATUTORY AUTHORITY. TDI proposes amendments to §19.810 under Occupations Code §§55.002, 55.004(a), and 55.0041 and Insurance Code §§36.109, 4001.005, and 36.001.

Occupations Code §55.002 requires state agencies to adopt rules to exempt certain military service members from increased fees and penalties for failure to timely renew a license.

Occupations Code §55.004(a) requires state agencies to adopt rules for the issuance of a license to certain military service members, military veterans, and military spouses.

Occupations Code §55.0041 which addresses recognition of out-of-state licenses of military service members and military spouses, requires state agencies to adopt rules to implement the section.

Insurance Code §36.109, which addresses renewal extension for certain persons performing military service, authorizes the commissioner to adopt rules as necessary to implement the section.

Insurance Code §4001.005 authorizes the commissioner to adopt rules necessary to implement Title 13 of the Insurance Code and to meet minimum requirements of federal law.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The proposed amendments to §19.810 implement Occupations Code §§55.002 - 55.004, 55.0041, and 55.006.

§19.810. *License Renewal and Application for an Expired License.*

(a) Applicability. [~~This section becomes applicable to licensees and applicants on June 1, 2018. Prior to June 1, 2018, license renewal and reissuances will be processed under the regulations in effect prior to the adoption of this section.~~] This section applies to the renewal of a license and application for an expired license under Insurance Code Title 13, concerning Regulation of Professionals, that was issued or renewed on or after November 1, 2015.

(b) Conflicts with other sections. To the extent that this section conflicts with §1.814 [§19.803] of this title (relating to Military Service Member, Military Veteran, and Military Spouse) in the application of this section and §1.814 [§19.803] to military service members, military veterans, and military spouses, §1.814 [§19.803] controls.

(c) Unexpired license. A licensee may apply for renewal of a license that has neither expired nor been suspended or revoked by:

(1) submitting to TDI the required renewal application fee and renewal application; and

(2) completing the applicable continuing education requirement within the reporting period and prior to the expiration of the license, as required under Insurance Code §4004.055, concerning Conduct, Disciplinary Actions, and Sanctions.



(d) Noncompliance with subsection (c) of this section. If the licensee does not comply with subsection (c) of this section, the license will not be renewed and will expire on the expiration date.

(e) Renewal of a license that has been expired for 90 days or less. A licensee may renew a license that has been expired for 90 days or less. The licensee must submit to TDI within 90 days after the license expiration date:

- (1) the required renewal application fee;
- (2) an additional fee equal to one-half of the required renewal application fee;
- (3) a completed renewal application; and
- (4) evidence demonstrating that the licensee has:

(A) completed the applicable continuing education requirement before the license expired; or

(B) completed continuing education after the license expired and paid all applicable fines as required under Insurance Code §4004.055.

(f) Effect of renewal or nonrenewal of expired license. If the licensee completes each item listed in subsection (c) [(d)] of this section for an unexpired license as described, or completes each item listed in subsection (e) of this section within 90 days after the license expiration date, and the license is renewed, the license will be renewed effective as of the license expiration date. If the licensee fails to complete each item listed in subsection (c) of this section prior to the expiration date, or subsection (e) [(d)] of this section within 90 days after the license expiration date, as applicable, the license cannot be renewed, and the individual cannot engage in the business of insurance in the capacity granted by that license effective as of the license's expiration date and continuing until the individual obtains a new license as provided in subsection (g) or (h) of this section.

(g) License expired for more than 90 days. If an individual's license has been expired for more than 90 days, but less than one year, the individual may apply for the expired license without an examination. The individual must submit to TDI within one year after the date the license expired:

- (1) a new original application;
- (2) the required application fee;
- (3) an additional fee equal to one-half of the required application fee; and [;]
- (4) evidence demonstrating that the licensee has:

(A) completed the applicable continuing education requirement before the license expired; or

(B) completed continuing education after the license expired and paid all applicable fines as required under Insurance Code §4004.055.

(h) License expired for one year or more. If an individual's license has been expired for one year or more, to obtain the expired license the individual must:

(1) complete the requirements for a [an] new license described in §§19.805 - 19.807 of this title (relating to Application for a New Individual License, Application for a Provisional Permit, and Application for a Temporary License), including reexamination, if applicable; and

(2) for a license that expired, was canceled, revoked, or not renewed on or after November 1, 2015, evidence demonstrating that the licensee:

(A) completed the applicable continuing education requirement before the license expired; or

(B) completed continuing education after the license expired and paid all applicable fines as required under Insurance Code §4004.055.

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

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Jessica Barta

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6555



## SUBCHAPTER K. CONTINUING EDUCATION, ADJUSTER PRELICENSING EDUCATION PROGRAMS, AND CERTIFICATION COURSES

### 28 TAC §19.1004

STATUTORY AUTHORITY. TDI proposes amendments to §19.1004 under Occupations Code §§55.002, 55.004(a), and 55.0041 and Insurance Code §§36.109, 4001.005, and 36.001.

Occupations Code §55.002 requires state agencies to adopt rules to exempt certain military service members from increased fees and penalties for failure to timely renew a license.

Occupations Code §55.004(a) requires state agencies to adopt rules for the issuance of a license to certain military service members, military veterans, and military spouses.

Occupations Code §55.0041, which addresses recognition of out-of-state licenses of military service members and military spouses, requires state agencies to adopt rules to implement the section.

Insurance Code §36.109, which addresses renewal extension for certain persons performing military service, authorizes the commissioner to adopt rules as necessary to implement the section.

Insurance Code §4001.005 authorizes the commissioner to adopt rules necessary to implement Title 13 of the Insurance Code and to meet minimum requirements of federal law.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The proposed amendments to §19.1004 implement Occupations Code §55.003 and Insurance Code §36.109.

*§19.1004. Licensee Exemption from and Extension of Time for Continuing Education.*

(a) Any exemption or extension granted to a licensee under subsections (b) - (f) [(b) - (g)] of this section applies to all license types held by the licensee. Nothing within this subchapter may be construed as preventing TDI from auditing a licensee to confirm the continued existence of circumstances supporting the exemption or extension.

(b) An agent who held a Texas resident license issued under Insurance Code Article 21.07-1, as Group I, legal reserve life insurance agent or general lines life, accident, and health insurance agent; Article 21.07-3, as managing general agent; or Article 21.14, as local recording agent, solicitor, general lines property and casualty agent, or insurance service representative, for at least 20 years or more as of December 31, 2002, is exempt from completing the required number of continuing education hours in §19.1003 of this title (relating to Licensee Hour and Completion Requirements). Agents must confirm that they qualify for this exemption by submitting a written request to TDI indicating that they have met the longevity requirement. TDI or TDI's designee will provide written notice that an agent qualifies for this exemption. Agents that qualified for the longevity exemption authorized under the Insurance Code prior to September 1, 2001, remain qualified and do not have to reapply for this exemption.

(c) A licensee who on or after January 1, 2003, has been continuously licensed by TDI for at least 20 years is exempt from completing the required number of continuing education hours in §19.1003 of this title. For purposes of this subsection "continuously licensed" means that the licensee has held a TDI issued license for the entire period of time without any lapse in excess of 90 days in which the licensee was not licensed or failed to renew a license. The exemption will apply beginning with the reporting period in which the licensee reaches the 20th year of licensure. TDI or TDI's designee will provide written notice to the licensee that a licensee qualifies for this exemption. Licensees may not claim the exemption prior to receiving written notice that they qualify for the exemption. Licensees may submit a written request to TDI to evaluate their longevity status.

(d) Nonresident licensees, are subject to the following requirements:

(1) A nonresident licensee, including an adjuster with a designated home state adjuster license issued by a state other than Texas, who is in compliance with the licensee's resident state's or adjuster's designated home state's continuing education requirements are not required to complete the continuing education requirement under this subchapter. A licensee may qualify for this exemption based on the following:

(A) the licensee's state of residence, or adjuster's designated home state, claimed in the licensee's original application;

(B) by sending written notification to TDI or its designee stating that the licensee is a resident of another state, or the adjuster has a designated home state other than Texas, with a certificate of good standing; or

(C) by sending any other document acceptable to TDI, showing that the licensee has a resident license or an adjuster's designated home state adjuster license in good standing in that state.

(2) A designated home state adjuster licensee who designates Texas as the licensee's home state is not exempt under this subsection and must complete continuing education under the same requirements as a Texas resident adjuster as required under §19.1003(e) of this title.

(e) Licensees who meet the criteria of illness, medical disability, or circumstances beyond the control of the licensee may apply for

an exemption or extension of time to complete their continuing education requirement without incurring a fine or a waiver, in whole or in part, of the continuing education requirement. Business reasons do not constitute circumstances beyond the control of the licensee. TDI will establish the duration of the extension when it is granted. If the circumstances supporting the extension continue beyond the granted extension period, the licensee may reapply for an exemption or extension. The licensee's application must include the information set forth in paragraphs (1) - (6) of this subsection:

(1) a written statement of the exact nature of the illness, medical disability, or other extenuating circumstances beyond the control of the licensee that have prevented or will prevent the licensee from completing the required hours within the reporting period;

(2) evidence regarding the illness or medical disability of the licensee and circumstances beyond the control of the licensee;

(3) a written assessment of whether the condition is temporary, permanent, or unknown;

(4) a written statement as to whether the licensee will be able to perform activities including any acts of an agent or adjuster during the exemption or extension period being requested;

(5) the estimated date when the licensee will be able to perform any activities including any acts of an agent or adjuster in accordance with the medical reports or other documents pertaining to circumstances beyond the control of the licensee; and

(6) any other information that may be of assistance in evaluating the request.

~~[(f) A military service member may request an exemption or extension as follows:]~~

~~[(1) a military service member is entitled to two additional years to complete the continuing education requirements specified in this subchapter and may request the extension under §19.803(e) of this title; and]~~

~~[(2) a military service member serving in a combat theater, as provided for in Insurance Code §36.109, may apply to TDI for an exemption from or an extension of time for meeting the continuing education requirements or extending the licensee's license renewal under §19.803(f) of this title.]~~

~~[(g) An individual holding a risk manager license is exempt from the continuing education requirements under this subchapter for any license held by the individual, if the individual demonstrates in writing to TDI that the individual has held one of the following designations listed in Insurance Code §4153.055, concerning Exemptions from Examination and Continuing Education Requirement, for a period of not less than 30 years:~~

~~(1) certified insurance counselor,~~

~~(2) associate in risk management, or~~

~~(3) certified risk manager.~~

~~[(h) A licensee holding only a funeral prearrangement life insurance agent license or a life insurance not exceeding \$25,000 agent license and meeting the requirements specified in Insurance Code §4054.159, concerning Continuing Education Exemption, or Insurance Code §4054.207, concerning Continuing Education Exemption, is exempt from completing the continuing education requirements in this subchapter. A licensee claiming this exemption must attest to meeting this requirement during each reporting period with the licensee's license renewal.~~

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

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Jessica Barta

General Counsel

Texas Department of Insurance

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## CHAPTER 25. INSURANCE PREMIUM FINANCE

### SUBCHAPTER B. LICENSING AND REGULATION

#### 28 TAC §25.24

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §25.24, concerning applications for an insurance premium finance company license. The proposed amendments to §25.24 implement Senate Bill 422, 88th Legislature, 2023, which amended Occupations Code §§55.004(d), 55.0041, and 55.005(a).

**EXPLANATION.** Chapter 55 of the Occupations Code provides for alternative licensing procedures and requirements for military service members, military veterans, and military spouses. Before the passage of SB 422, Occupations Code §55.0041 required licensing agencies to recognize the out-of-state licenses of military spouses. SB 422 amended §55.0041 to also apply to military service members and to incorporate additional changes.

As part of the implementation of SB 422, TDI has separately proposed new 28 TAC §1.814, which provides alternative licensing procedures and requirements for license applications by military service members, military veterans, and military spouses, consistent with Occupations Code Chapter 55 and with 50 USC §4025a. Proposed new §1.814 applies generally to all licenses, permits, certifications, and other authorizations issued by TDI, including insurance premium finance company licenses.

Section 25.24 addresses requirements for insurance premium finance company licenses, and subsections (c) and (d) of §25.24 provide alternative licensing procedures for military spouses and related application fee exemption. This proposal removes subsections (c) and (d) because they will be made redundant by proposed new §1.814. In addition, subsection (b) is amended to remove a reference to subsection (d).

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Jodie Delgado, director of the Agent and Adjuster Licensing Office, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amended section, other than that imposed by the statute. Ms. Delgado made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amended section.

Ms. Delgado does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed amended section is in effect, Ms. Delgado expects that administering and enforcing the proposed amendments will have the public benefits of removing redundant provisions and ensuring that TDI's rules conform to Occupations Code §55.0041 in a consistent way.

Ms. Delgado expects that the proposed amendments will not increase the cost of compliance because the amendments do not create or impose any requirements.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TDI has determined that the proposal will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** TDI has determined that this proposal does not impose a possible cost on regulated persons. There are no additional costs as a result of this proposal because it only removes existing regulations made redundant by new regulations. No additional rule amendments are required under Government Code §2001.0045.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TDI has determined that for each year of the first five years that the proposed amended section is in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will limit an existing regulation;
- will decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

**TAKINGS IMPACT ASSESSMENT.** TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on January 3, 2024. Send your comments to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov) or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov) or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on January 3, 2024. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes amendments to §25.24 under Occupations Code §55.0041 and Insurance Code §651.003 and §36.001.

Occupations Code §55.0041, which addresses recognition of out-of-state licenses of military service members and military spouses, requires state agencies to adopt rules to implement the section.

Insurance Code §651.003 authorizes the commissioner to adopt rules necessary to administer Insurance Code Chapter 651.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Amended §25.24 implements Occupations Code §55.0041.

§25.24. *License Application.*

(a) An applicant for an insurance premium finance company license must file an application Form PF1 with TDI. The application must include the following as applicable:

- (1) List of Principals (Form PF2);
- (2) Premium Finance Application Questionnaire (Form PF3);
- (3) Biographical Affidavit (Form PF4) for each individual named on Form PF2;
- (4) General statement of experience giving applicant's qualifications;
- (5) List of Other States of Licensure (Form PF5);
- (6) Appointment of Statutory Agent and Consent to Service (Form PF6);
- (7) Sworn financial statement;
- (8) Sample Business Operation forms;
- (9) \$400 Investigation Fee;
- (10) Partnership agreement;
- (11) Certified copy of Assumed Name Certificate as on file with the County Clerk or Secretary of State;
- (12) Originally certified copy of Articles of Incorporation from the Office of the Secretary of State or equivalent office in another state;
- (13) Certified copy of Bylaws;
- (14) Certified copy of Minutes;
- (15) Current Franchise Tax Certificate of Good Standing or letter of exemption issued by the Texas Comptroller of Public Accounts; and
- (16) Certified copy of Certificate of Authority issued by the Texas Secretary of State (foreign corporations only).

(b) ~~On~~ Except as provided by subsection (d) of this section, notification by TDI of approval of the application, the applicant must submit a license fee as follows:

- (1) Licenses issued January 1 through June 30--\$200;
- (2) Licenses issued July 1 through December 31--\$100.

~~[(e) Military spouses who are licensed in a state with substantially equivalent requirements to those of this state are eligible for a license while the military service member to whom the military spouse is married is stationed at a military installation in this state. This license is effective for a period of three years from the date the spouse receives confirmation from the Texas Department of Insurance of receipt of the items described by this subsection. The military spouse must:]~~

~~[(1) submit an application notifying TDI of the military spouse's intent to operate under the license in Texas;]~~

~~[(2) submit to TDI proof of the military spouse's residency in Texas and a copy of the spouse's military identification card; and]~~

~~[(3) show evidence of good standing from the jurisdiction with substantially equivalent requirements to the requirements of this state.]~~

~~[(d) A military spouse will not be assessed any application fees under this section.]~~

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

Filed with the Office of the Secretary of State on November 15, 2023.

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Jessica Barta

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6555



## CHAPTER 34. STATE FIRE MARSHAL

The Texas Department of Insurance (TDI) proposes to repeal 28 TAC §§34.524, 34.631, 34.726, and 34.833, concerning licenses issued to military service members, military veterans, and military spouses. The proposed repeals implement Senate Bill 422, 88th Legislature, 2023 and Chapter 55 of the Occupations Code.

EXPLANATION. Chapter 55 of the Occupations Code provides for alternative licensing procedures and requirements for military service members, military veterans, and military spouses. Before the passage of SB 422, Occupations Code §55.0041 required licensing agencies to recognize the out-of-state licenses of military spouses. SB 422 amended §55.0041 to also apply to military service members and to incorporate additional changes.

As part of the implementation of SB 422, TDI has separately proposed new 28 TAC §1.814, which provides alternative licensing procedures and requirements for license applications by military service members, military veterans, and military spouses, consistent with Occupations Code Chapter 55 and 50 USC §4025a. Proposed new §1.814 applies to all licenses, permits, certifications, and other authorizations issued by TDI, including those issued by the state fire marshal.

Section 34.524 addresses the waiver of application and examination fees, as well as alternative licensing options for military service members, veterans, and spouses, as it relates to fire extinguisher rules.

Section 34.631 addresses the waiver of application and examination fees, as well as alternative licensing options for military service members, veterans, and spouses, as it relates to fire alarm rules.

Section 34.726 addresses the waiver of application and examination fees, as well as alternative licensing options for military service members, veterans, and spouses, as it relates to fire sprinkler rules.

Section 34.833 addresses the waiver of application and examination fees, as well as alternative licensing options for military service members, veterans, and spouses, as it relates to the sale and storage of fireworks.

This proposal repeals these sections, which are made redundant by proposed new §1.814.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Jodie Delgado, director of the Agent and Adjuster Licensing Office, has determined that during each year of the first five years the proposed repeals are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the repeals other than that imposed by the statute. Ms. Delgado made this determination because the proposed repeals do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed repeals.

Ms. Delgado does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed repealed sections are in effect, Ms. Delgado expects that administering and enforcing the proposed repeals will have the public benefits of eliminating redundant sections and ensuring that TDI's rules conform to Occupations Code §55.0041 in a consistent way.

Ms. Delgado expects that the proposed repeals will not increase the cost of compliance because the repeals do not create or impose any requirements.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TDI has determined that the proposed repeals will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** TDI has determined that the proposed repeals do not impose a possible cost on regulated persons. There are no additional costs as a result of this proposal because it only removes existing sections made redundant by a new section. No additional rule repeals are required under Government Code §2001.0045.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TDI has determined that for each year of the first five years that the proposed repeals are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will repeal existing regulations;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

**TAKINGS IMPACT ASSESSMENT.** TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on January 3, 2024. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by the TDI no later than 5:00 p.m., central time, on January 3, 2024. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

## SUBCHAPTER E. FIRE EXTINGUISHER RULES

### 28 TAC §34.524

**STATUTORY AUTHORITY.** TDI proposes the repeal of §34.524 under Occupations Code §§55.004(a), 55.0041(e), and 55.008(b) and Insurance Code §§6001.051(b), 6001.052(c), and 36.001.

Occupations Code §55.004(a) requires state agencies to adopt rules for the issuance of a license to certain military service members, military veterans, and military spouses.

Occupations Code §55.0041(e), which addresses recognition of out-of-state licenses of military service members and military spouses, requires state agencies to adopt rules to implement the section.

Occupations Code §55.008(b), which addresses apprenticeship requirements for certain applicants with military experience, requires state agencies to adopt rules necessary to implement the section.

Insurance Code §6001.051(b) provides that the commissioner may issue rules necessary to administer Insurance Code Chapter 6001 through the state fire marshal.

Insurance Code §6001.052(c) requires the commissioner to prescribe requirements for applications and qualifications for licenses, permits, and certificates issued under Insurance Code Chapter 6001.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the

powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The repeal of §34.524 implements Occupations Code Chapter 55.

§34.524. *Military Service Members, Military Veterans, or Military Spouses.*

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

Filed with the Office of the Secretary of State on November 15, 2023.

TRD-202304292

Jessica Barta

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: December 31, 2023

For further information, please call: (512) 676-6555



## SUBCHAPTER F. FIRE ALARM RULES

### 28 TAC §34.631

STATUTORY AUTHORITY. TDI proposes the repeal of §34.631 under Occupations Code §§55.004(a), 55.0041(e), and 55.008(b) and Insurance Code §6002.051(b) and §36.001.

Occupations Code §55.004(a) requires TDI to adopt rules for the issuance of a license to certain military service members, military veterans, and military spouses.

Occupations Code §55.0041(e), which addresses recognition of out-of-state licenses of military service members and military spouses, requires state agencies to adopt rules to implement §55.0041.

Occupations Code §55.008(b), which addresses apprenticeship requirements for certain applicants with military experience, requires state agencies to adopt rules necessary to implement the section.

Insurance Code §6002.051(b) provides that the commissioner may adopt rules as necessary to administer Insurance Code Chapter 6002, including rules the commissioner considers necessary to administer the chapter through the state fire marshal.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The repeal of §34.631 implements Occupations Code Chapter 55.

§34.631. *Military Service Members, Military Veterans, or Military Spouses.*

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

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Jessica Barta

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: December 31, 2023

For further information, please call: (512) 676-6555



## SUBCHAPTER G. FIRE SPRINKLER RULES

### 28 TAC §34.726

STATUTORY AUTHORITY. TDI proposes the repeal of §34.726 under Occupations Code §§55.004(a), 55.0041(e), and 55.008(b) and Insurance Code §6003.051(b) and §36.001.

Occupations Code §55.004(a) requires TDI to adopt rules for the issuance of a license to certain military service members, military veterans, and military spouses.

Occupations Code §55.0041(e) requires state agencies to adopt rules to implement §55.0041.

Occupations Code §55.008(b), which addresses apprenticeship requirements for certain applicants with military experience, requires state agencies to adopt rules necessary to implement the section.

Insurance Code §6003.051(b) provides that the commissioner may issue rules necessary to administer Insurance Code Chapter 6003 through the state fire marshal.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The repeal of §34.726 implements Occupations Code Chapter 55.

§34.726. *Military Service Members, Military Veterans, or Military Spouses.*

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

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Jessica Barta

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6555



## SUBCHAPTER H. STORAGE AND SALE OF FIREWORKS

### 28 TAC §34.833

STATUTORY AUTHORITY. TDI proposes the repeal of §34.833 under Occupations Code §§55.004(a), 55.0041(e), 55.008(b), and 2154.052, and Insurance Code §36.001.

Occupations Code §55.004(a) requires state agencies to adopt rules for the issuance of a license to certain military service members, military veterans, and military spouses.

Occupations Code §55.0041(e), which addresses recognition of out-of-state licenses of military service members and military spouses, requires state agencies to adopt rules to implement §55.0041.

Occupations Code §55.008(b), which addresses apprenticeship requirements for certain applicants with military experience, requires state agencies to adopt rules necessary to the section.

Occupations Code §2154.052 authorizes the commissioner to issue rules to administer Insurance Code Chapter 2154 requires the commissioner to adopt rules regulating issuance of licenses and permits to persons engaged in manufacturing, selling, storing, possessing, or transporting fireworks in this state and adopt rules for applications for licenses and permits.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The repeal of §34.833 implements Occupations Code Chapter 55.

*§34.833. Military Service Members, Military Veterans, or Military Spouses.*

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

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Jessica Barta

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6555



## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **PART 13. TEXAS COMMISSION ON FIRE PROTECTION**

#### **CHAPTER 421. STANDARDS FOR CERTIFICATION**

##### **37 TAC §§421.1, 421.3, 421.17**

The Texas Commission on Fire Protection (commission) proposes amendments to 37 Texas Administrative Code Chapter 421, Standards For Certification, concerning §421.1 Procedures for Meetings, §421.3, Minimum Standards Set by the Commission, and §421.17, Requirement to Maintain Certification.

##### **BACKGROUND AND PURPOSE**

The purpose of the proposed amendments to rule §421.1 is to provide information regarding the appointment of advisory committees as mentioned in 37 Texas Administrative Code, Chapter 463, Advisory Committees, Practice and Procedures. Proposed amendments to §421.3 include the following functional descriptions: Plans Examiner, Fire and Safety Educator I, Fire

and Safety Educator II, and Fire Marshal. Proposed amendments to §421.17 outlines new guidelines for expired certifications from one year to greater than one year but no longer than five years.

##### **FISCAL NOTE IMPACT ON STATE AND LOCAL GOVERNMENT**

Michael Wisko, Executive Director, has determined that for each year of the first five-year period, the proposed amendments are in effect, there will be no significant fiscal impact to state government or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4).

##### **PUBLIC BENEFIT AND COST NOTE**

Mr. Wisko has also determined under Texas Government Code §2001.024(a)(5) that for each year of the first five years the amendments are in effect the public benefit will be more accurate, clear, and concise rules regarding the appointment of any advisory committee or ad hoc committee appointed by the commission.

##### **LOCAL ECONOMY IMPACT STATEMENT**

There is no anticipated effect on the local economy for the first five years that the proposed amended section is in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and 2001.024(a)(6).

##### **ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES AND RURAL COMMUNITIES**

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments. Therefore, no economic impact statement or regulatory flexibility analysis, as provided by Texas Government Code §2006.002, is required.

##### **GOVERNMENT GROWTH IMPACT STATEMENT**

The agency has determined under Texas Government Code §2006.0221 that during the first five years the amendments are in effect:

- (1) the rules will not create or eliminate a government program;
- (2) the rules will not create or eliminate any existing employee positions;
- (3) the rules will not require an increase or decrease in future legislative appropriation;
- (4) the rules will not result in a decrease in fees paid to the agency;
- (5) the rules will not create a new regulation;
- (6) the rules will not expand a regulation;
- (7) the rules will not increase the number of individuals subject to the rule; and
- (8) the rules are not anticipated to have an adverse impact on the state's economy.

##### **TAKINGS IMPACT ASSESSMENT**

The commission has determined that no private real property interests are affected by this proposal and this proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, this proposal does

not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

#### COSTS TO REGULATED PERSONS

The proposed amendments do not impose a cost on regulated persons, including another state agency, a special district, or a local government, and, therefore, are not subject to Texas Government Code §2001.0045.

#### ENVIRONMENTAL IMPACT STATEMENT

The commission has determined that the proposed amendments do not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

#### REQUEST FOR PUBLIC COMMENT

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register*, to Michael Wisko, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to [deborah.cowan@tcfp.texas.gov](mailto:deborah.cowan@tcfp.texas.gov).

#### STATUTORY AUTHORITY

The amended rule is proposed under Texas Government Code, §419.008(f), which authorizes the commission to appoint advisory committees to assist it in the performance of its duties.

#### CROSS-REFERENCE TO STATUTE

No other statutes, articles, or codes are affected by these amendments.

#### §421.1. *Procedures for Meetings.*

~~[(a)]~~ The Commission may maintain advisory committees and ad hoc committees to assist with rulemaking, curriculum development, and the performance of the Commission's duties. Rules related to these committees are outlined in the 37 Texas Administrative Code (TAC), Chapter 463, Advisory Committees, Practices and Procedures. ~~[These committee names, make up, term limits, roles and meeting requirements will be outlined within this rule. These committees shall exist for no more than five (5) years and shall be reviewed and evaluated for continuance before the end of the fifth year.]~~

~~[(b)]~~ **Time and place.** The committees shall meet at such time and place in the State of Texas as they deem proper.]

~~[(c)]~~ **Meeting called.** Meetings shall be called by the chairman, by the Commission, or upon the written request of a quorum of members.]

~~[(d)]~~ **Quorum.** A majority of members shall constitute a quorum.]

~~[(e)]~~ **Members.** Committee members serve at the will of the Commission and may serve six-year staggered terms but may not serve more than two (2) consecutive terms.]

~~[(f)]~~ **Officers.** Committee Officers shall consist of a chairman and vice-chairman appointed by the Commission.]

~~[(g)]~~ **Responsibility.** Committee responsibilities shall be established by the Commission.]

~~[(h)]~~ **Effective Date.** All committees will have designated effective dates not to exceed five years without review and reestablishment by the Commission.]

~~[(i)]~~ **Removal.** It is a ground for removal from an advisory committee appointed by the Commission if a member is absent from more than half of the regularly scheduled committee meetings that the mem-

ber is eligible to attend during a calendar year unless the absence is excused by a majority vote of the committee.]

~~[(j)]~~ Effective in 2021, the Commission established three (3) advisory committees, the Curriculum and Testing, Firefighter Advisory, and Health and Wellness. These committees will expire in 2026 unless reviewed and reestablished by the Commission. The Commission has established two (2) ad hoc committees, 427 and 435, which will exist for the period of time needed, not to exceed two years.]

#### §421.3. *Minimum Standards Set by the Commission.*

(a) General statement. It shall be clearly understood that the specified minimum standards described in this section are designated as a minimum program. Employing entities are encouraged to exceed the minimum program wherever possible. Continuous in-service training beyond the minimum standards for fire protection personnel is strongly recommended. Nothing in these regulations shall limit or be construed as limiting the powers of the Civil Service Commission, or the employing entity, to enact rules and regulations which establish a higher standard of training than the minimum specified, or which provides for the termination of the services of unsatisfactory employees during or upon completion of the prescribed probationary period.

(b) Functional position descriptions.

(1) Structural Fire Protection personnel. The following general position description for structural fire protection personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the fire fighter operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. Successfully complete a commission approved course; achieve a passing score on written and performance certification examinations; must be at least 18 years of age; generally, the knowledge and skills required show the need for a high school education or equivalent; ability to communicate verbally, via telephone and radio equipment; ability to lift, carry, drag, and balance weight equivalent to the average human weight; ability to interpret in English, written and oral instructions; ability to work effectively in high stress situations; ability to work effectively in an environment with loud noises and flashing lights; ability to function through an entire work shift; ability to calculate weight and volume ratios; ability to read and understand English language manuals including chemical, medical and technical terms, and road maps; ability to accurately discern street signs and address numbers; ability to document in English, all relevant information in prescribed format in light of legal ramifications of such; ability to converse in English with coworkers and other emergency response personnel. Good manual dexterity with ability to perform all tasks related to the protection of life and property; ability to bend, stoop, and crawl on uneven surfaces; ability to withstand varied environmental conditions such as extreme heat, cold, and moisture; and ability to work in low or no light, confined spaces, elevated heights and other dangerous environments.

(B) Competency. A basic fire fighter must demonstrate competency handling emergencies utilizing equipment and skills in accordance with the objectives in Chapter 1 of the commission's Certification Curriculum Manual.

(2) Aircraft Rescue Fire Fighting personnel. The following general position description for aircraft rescue fire fighting personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of aircraft rescue fire fighting personnel operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.



(A) Qualifications. In addition to the qualifications for basic structural fire protection personnel: familiarity with geographic and physical components of an airport; ability to use and understand communication equipment, terminology, and procedures utilized by airports; ability and knowledge in the application of fire suppression agents; and ability to effectively perform fire suppression and rescue operations.

(B) Competency. Basic fire fighting and rescue personnel must demonstrate competency handling emergencies utilizing equipment and skills in accordance with the objectives in Chapter 2 of the commission's Certification Curriculum Manual.

(3) Marine Fire Protection personnel. The following general position description for marine fire protection personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the marine fire fighter operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to the qualifications for basic structural fire protection personnel: familiarity with geographic and physical components of a navigable waterway; ability to use and understand communication equipment, terminology, and procedures used by the maritime industry; and knowledge in the operation of fire fighting vessels.

(B) Competency. A marine fire fighter must demonstrate competency in handling emergencies utilizing equipment and skills in accordance with the objectives in Chapter 3 of the commission's Certification Curriculum Manual.

(4) Fire Inspection personnel. The following general position description for fire inspection personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the fire inspector operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. Successfully complete a commission approved course; achieve a passing score on certification examinations; must be at least 18 years of age; generally, the knowledge and skills required to show the need for a high school education or equivalent; ability to communicate verbally, via telephone and radio equipment; ability to lift, carry, and balance weight equivalent to weight of common tools and equipment necessary for conducting an inspection; ability to interpret written and oral instructions; ability to work effectively with the public; ability to work effectively in an environment with potentially loud noises; ability to function through an entire work shift; ability to calculate area, weight and volume ratios; ability to read and understand English language manuals including chemical, construction and technical terms, building plans and road maps; ability to accurately discern street signs and address numbers; ability to document, in writing, all relevant information in a prescribed format in light of legal ramifications of such; ability to converse in English with coworkers and other personnel. Demonstrate knowledge of characteristics and behavior of fire, and fire prevention principles. Good manual dexterity with the ability to perform all tasks related to the inspection of structures and property; ability to bend, stoop, and crawl on uneven surfaces; ability to climb ladders; ability to withstand varied environmental conditions such as extreme heat, cold, and moisture; and the ability to work in low light, confined spaces, elevated heights, and other dangerous environments.

(B) Competency. A fire inspector must demonstrate competency in conducting inspections utilizing equipment and skills in accordance with the objectives in Chapter 4 of the commission's Certification Curriculum Manual.

(5) Fire Investigator personnel. The following general position description for fire investigator personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the fire investigator operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. Successfully complete a commission approved course; achieve a passing score on certification examinations; be at least 18 years of age; generally, the knowledge and skills required to show the need for a high school education or equivalent; ability to communicate verbally, via telephone and radio equipment; ability to lift, carry, and balance weight equivalent to weight of common tools and equipment necessary for conducting an investigation; ability to interpret written and oral instructions; ability to work effectively with the public; ability to work effectively in a hazardous environment; ability to function through an entire work shift; ability to calculate area, weight and volume ratios; ability to read and understand English language manuals including chemical, legal and technical terms, building plans and road maps; ability to accurately discern street signs and address numbers; ability to document, in writing, all relevant information in a prescribed format in light of legal ramifications of such; ability to converse in English with coworkers and other personnel. Good manual dexterity with the ability to perform all tasks related to fire investigation; ability to bend, stoop, and walk on uneven surfaces; ability to climb ladders; ability to withstand varied environmental conditions such as extreme heat, cold and moisture; and the ability to work in low light, confined spaces, elevated heights, and other potentially dangerous environments.

(B) Competency. A fire investigator or arson investigator must demonstrate competency in determining fire cause and origin utilizing equipment and skills in accordance with the objectives in Chapter 5 of the commission's Certification Curriculum Manual.

(6) Hazardous Materials Technician personnel. The following general position description for hazardous materials personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the hazardous materials technician operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to the qualifications for basic structural fire protection personnel: successfully complete a commission approved course; achieving a passing score on the certification examination; the ability to analyze a hazardous materials incident, plan a response, implement the planned response, evaluate the progress of the planned response, and terminate the incident.

(B) Competency. A hazardous materials technician must demonstrate competency handling emergencies resulting from releases or potential releases of hazardous materials, using specialized chemical protective clothing and control equipment in accordance with the objectives in Chapter 6 of the commission's Certification Curriculum Manual.

(7) Hazardous Materials Incident Commander personnel. The following general position description for Hazardous Materials Incident Commander serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Hazardous Materials Incident Commander operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to the qualifications for awareness and operations level personnel, the Hazardous Materials Incident Commander is an individual who has met all the job perfor-

mance requirements of Hazardous Materials Incident Commander as defined in Chapter 8 of NFPA 472, Competence of Responders to Hazardous Materials Incidents/Weapons of Mass Destruction. The individual should demonstrate knowledge in the policies, plans, and procedures regarding hazardous materials response as adopted by the local jurisdiction; and all components of the incident command system and their proper utilization.

(B) Competency. In addition to the competencies of awareness and operations level personnel, a Hazardous Materials Incident Commander must demonstrate competency in such areas as: analyzing an incident via the collection of information and an estimation of potential outcomes; planning appropriate response operations; implementing a planned response; evaluating the progress of a planned response and revising as necessary; terminating an incident; conducting a post-incident critique; and reporting and documenting an incident in a manner consistent with local, state, and federal requirements.

(8) Driver/Operator-Pumper personnel. The following general position description for driver/operator-pumper personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the driver/operator-pumper of a fire department pumper operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to the qualifications for basic structural fire protection personnel: ability to perform specified routine test, inspection, and maintenance functions; ability to perform practical driving exercises; ascertain the expected fire flow; ability to position a fire department pumper to operate at a fire hydrant; ability to produce effective streams; and supply sprinkler and standpipe systems.

(B) Competency. A driver/operator-pumper must demonstrate competency operating a fire department pumper in accordance with the objectives in Chapter 7 of the commission's Certification Curriculum Manual.

(9) Fire Officer I personnel. The following general position description for Fire Officer I personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire Officer I operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to the qualifications for basic structural fire protection and Fire Instructor I personnel: the ability to supervise personnel, and assign tasks at emergency operations; the ability to direct personnel during training activities; the ability to recommend action for member-related problems; the ability to coordinate assigned tasks and projects, and deal with inquiries and concerns from members of the community; the ability to implement policies; the ability to perform routine administrative functions, perform preliminary fire investigation, secure an incident scene and preserve evidence; the ability to develop pre-incident plans, supervise emergency operations, and develop and implement action plans; the ability to deploy assigned resources to ensure a safe work environment for personnel, conduct initial accident investigation, and document an incident.

(B) Competency. A Fire Officer I must demonstrate competency in handling emergencies and supervising personnel utilizing skills in accordance with the objectives in Chapter 9 of the commission's Certification Curriculum Manual.

(10) Fire Officer II personnel. The following general position description for Fire Officer II personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire Officer II operating in the State of Texas. It is

ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to the qualifications for Fire Officer I and Fire Instructor I personnel: the ability to motivate members for maximum job performance; the ability to evaluate job performance; the ability to deliver life safety and fire prevention education programs; the ability to prepare budget requests, news releases, and policy changes; the ability to conduct pre-incident planning, fire inspections, and fire investigations; the ability to supervise multi-unit emergency operations, identify unsafe work environments or behaviors, review injury, accident, and exposure reports.

(B) Competency. A Fire Officer II must demonstrate competency in supervising personnel and coordinating multi-unit emergency operations utilizing skills in accordance with the objectives in Chapter 9 of the commission's Certification Curriculum Manual.

(11) Fire Officer III personnel. The following general position description for Fire Officer III personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire Officer III operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. A Fire Officer III is a midlevel supervisor who performs both supervisory and first-line managerial functions. In addition to the qualifications and competency for Fire Officer II, the Fire Officer III is an individual who has met all the job performance requirements of Fire Officer III as defined in Chapter 6 of NFPA 1021, Standard for Fire Officer Professional Qualifications. Typical duties of an individual at the Fire Officer III level include: establishing procedures for hiring, assignment, and professional development of personnel; developing public service/partnership and programs; preparing budgets and budget management systems; planning for organizational resource management; evaluating inspection and public safety programs and plans; managing multi-agency plans and operations; serving as Incident Commander at expanding emergency incidents for all hazard types; and developing and managing a departmental safety program.

(B) Competency. A Fire Officer III must demonstrate competency doing research; analyzing data and using evaluative techniques; developing proposals; developing, preparing, and implementing various procedures and programs within an organization; managing personnel resources; preparing and managing budgets; utilizing techniques to encourage personnel participation and development; and working in top-level positions within the incident command system.

(12) Fire Officer IV personnel. The following general position description for Fire Officer IV personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire Officer IV operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. A Fire Officer IV is an upper level supervisor who performs both supervisory and managerial functions. In addition to the qualifications and competency for Fire Officer III, the Fire Officer IV is an individual who has met all the job performance requirements of Fire Officer IV as defined in Chapter 7 of NFPA 1021, Standard for Fire Officer Professional Qualifications. Typical duties of an individual at the Fire Officer IV level include: administering job performance requirements; evaluating and making improvements to department operations; developing long-range plans and fiscal projections; developing plans for major disasters; serving as Incident Commander at major incidents for all hazard types; and administering comprehensive risk management programs.

(B) Competency. A Fire Officer IV must demonstrate competency in appraising and evaluating departmental programs to ensure adherence to current laws and best practices; developing medium and long-range plans for organizations; and assuming a top-level leadership role in both the organization and community.

(13) Fire Service Instructor I personnel. The following general position description for Fire Service Instructor I personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire Service Instructor I operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to successfully completing a commission approved course and achieving a passing score on the certification examination: must have the ability to deliver instructions effectively from a prepared lesson plan; the ability to use instructional aids and evaluation instruments; the ability to adapt to lesson plans to the unique requirements of both student and the jurisdictional authority; the ability to organize the learning environment to its maximum potential; the ability to meet the record-keeping requirements of the jurisdictional authority.

(B) Competency. A Fire Service Instructor I must demonstrate competency in delivering instruction in an environment organized for efficient learning while meeting the record-keeping needs of the authority having jurisdiction, utilizing skills in accordance with the objectives in Chapter 8 of the commission's Certification Curriculum Manual.

(14) Fire Service Instructor II personnel. The following general position description for Fire Service Instructor II personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire Service Instructor II operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to successfully completing a commission approved course, achieving a passing score on the certification examination, and meeting the qualifications for Fire Service Instructor I: the ability to develop individual lesson plans for a specific topic, including learning objectives, instructional aids, and evaluation instruments; the ability to schedule training sessions based on the overall training plan of the jurisdictional authority; the ability to supervise and coordinate the activities of other instructors.

(B) Competency. A Fire Service Instructor II must demonstrate competency in developing individual lesson plans; scheduling training sessions; and supervising other instructors, utilizing skills in accordance with the objectives in Chapter 8 of the commission's Certification Curriculum Manual.

(15) Fire Service Instructor III personnel. The following general position description for Fire Service Instructor III personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire Service Instructor III operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to successfully completing a commission approved course, achieving a passing score on the certification examination, and meeting the qualifications for Fire Service Instructor II: the ability to develop comprehensive training curricula and programs for use by single or multiple organizations; the ability to conduct organizational needs analysis; and the ability to develop training goals and implementation strategies.

(B) Competency. A Fire Service Instructor III must demonstrate competency in developing comprehensive training cur-

ricula and programs; conducting organizational needs analysis; and developing training goals and implementation strategies, utilizing skills in accordance with the objectives in Chapter 8 of the commission's Certification Curriculum Manual.

(16) Incident Safety Officer personnel. The following general position description for Incident Safety Officer personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Incident Safety Officer operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. An Incident Safety Officer is an individual who has met the requirements of Fire Officer Level I specified in NFPA 1021, Standard for Fire Officer Professional Qualifications and Chapter 6 of NFPA 1521, Standard for Fire Department Safety Officer and has the knowledge, skill, and abilities to manage incident scene safety. Typical Incident Safety Officer duties include risk and resource evaluation; hazard identification and communication; action plan reviews; safety briefings; accident investigation; post incident analysis; and participation in safety committee activities.

(B) Competency. An Incident Safety Officer must demonstrate competency in management of incident scene safety through a working knowledge of the various emergency operations as prescribed by the local jurisdiction; an understanding of building construction; fire science and fire behavior; managing an organization's personnel accountability system; and incident scene rehabilitation methodology.

(17) Basic Wildland Fire Protection personnel. The following general position description for Basic Wildland Fire Protection personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Basic Wildland Fire Fighter operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. A Basic Wildland Fire Fighter is an individual who has met the requirements of Chapter 5 of NFPA 1051, Standard for Wildland Fire Fighter Professional qualifications, and should demonstrate knowledge in: wildland fire behavior; fireline safety and use; limitations of personal protective equipment; fire shelter use; fire suppression tactics and techniques in wildland settings; and have an understanding of the fire fighter's role within the local incident management system.

(B) Competency. A Basic Wildland Fire Fighter must demonstrate competency in such areas as: maintaining personal protective equipment and assigned fire suppression tools and equipment; the ability to quickly prepare for a response when notified; recognizing hazards and unsafe situations in a wildland fire; securing a fire line; mopping up a fire area; and patrolling a fire area so as to ensure fire control.

(18) Intermediate Wildland Fire Protection personnel. The following general position description for Intermediate Wildland Fire Protection personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Intermediate Wildland Fire Fighter operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to the qualifications and competency for the Basic Wildland Fire Fighter, the Intermediate Wildland Fire Fighter is an individual who has met the requirements of Chapter 6 of NFPA 1051, Standard for Wildland Fire Fighter Professional qualifications, and should demonstrate knowledge in: basic map

reading; use of a locating device such as a compass; radio procedures as adopted by the local jurisdiction; and record keeping.

(B) Competency. An Intermediate Wildland Fire Fighter must demonstrate competency in such areas as: the ability to lead a team of fire fighters in the performance of assigned tasks while maintaining the safety of personnel; implementing appropriate fireline construction methods and other techniques for protection of exposed property; operation of water delivery equipment; securing an area of suspected fire origin and associated evidence; and serving as a lookout in a wildland fire.

(19) Plans Examiner personnel. The following general position description for Plans Examiner personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Plans Examiner operating in the State of Texas.

(A) Qualifications. A Plans Examiner is an individual who has met the requirements of Plans Examiner specified in NFPA 1030 (1031) Chapter 8, Standard for Professional Qualifications for Fire Prevention Program Positions.

(B) Competency. A Plans Examiner analyzes building construction, hazardous processes, and architectural drawings or plans to ensure compliance with building and fire codes. This individual is also charged with reviewing plans for new construction as well as modifications to existing structures to ensure that applicable fire and life safety codes are followed.

(20) Fire and Life Safety Educator I personnel. The following general position description for Fire and Life Safety Educator I personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire and Life Safety Educator I, operating in the State of Texas.

(A) Qualifications. A Fire and Life Safety Educator I is an individual who has met the requirements of Fire and Life Safety Educator I specified in NFPA 1030 (1035) Chapter 9, Standard for Professional Qualifications for Fire Prevention Program Positions.

(B) Competency. A Fire and Life Safety Educator I must demonstrate competency in the ability to coordinate and deliver existing educational programs and information designed to reduce risks within the community.

(21) Fire and Life Safety Educator II personnel. The following general position description for Fire and Life Safety Educator II personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire and Life Safety Educator II operating in the State of Texas.

(A) Qualifications. A Fire and Life Safety Educator II is an individual who has met the requirements of Fire and Life Safety Educator II specified in NFPA 1030 (1035) Chapter 10, Standard for Professional Qualifications for Fire Prevention Program Positions.

(B) Competency. A Fire and Life Safety Educator II must demonstrate competency in the ability to prepare educational programs and information to meet identified needs to reduce risks within the community.

(22) Fire Marshal personnel. The following general position description for Fire Marshal personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire Marshal operating in the State of Texas.

(A) Qualifications. A Fire Marshal is an individual who has met the requirements of Fire Marshal specified in NFPA 1030

(1037) Chapter 4 & 5, Standard for Professional Qualifications for Fire Prevention Program Positions.

(B) Competency. A person designated to provide delivery, management, or administration of fire-protection- and life-safety-related codes and standards, investigations, community risk reduction, education, or prevention services for local, county, state, provincial, federal, tribal, or private sector jurisdictions as adopted or determined by that entity.

§421.17. *Requirement to Maintain Certification.*

(a) All full-time or part-time employees of a fire department or local government assigned duties identified as fire protection personnel duties must maintain certification by the commission in the discipline(s) to which they are assigned for the duration of their assignment.

(b) In order to maintain the certification required by this section, the certificate(s) of the employees must be renewed annually by complying with §437.5 of this title (relating to Renewal Fees) and Chapter 441 of this title (relating to Continuing Education) of the commission standards manual.

(c) Except for subsection (d) of this section, or upon determination by the Agency Chief when special circumstances are presented, an individual whose certificate has been expired for greater than one year but no longer than five years, may renew their certification once they comply with the CE requirements for the period of time their certification was inactive, as outlines in 37 TAC, Chapter 441, Continuing Education, and they pay all applicable certification renewal fees for the period of time that their certification was inactive, as required in 37 TAC, Chapter 437, Fees [or longer may not renew the certificate previously held]. Individuals whose certification has been expired longer than five years, may not renew the certificate previously held. To obtain a new certification, an individual must meet the requirements in Chapter 439 of this title (relating to Examinations for Certification).

(d) A military service member whose certificate has been expired for three years or longer may not renew the certificate previously held. To obtain a new certification, the person must meet the requirements in Chapter 439 of this title. In order to qualify for this provision, the individual must have been a military service member at the time the certificate expired and continued in that status for the duration of the three-year period.

(e) The commission will provide proof of current certification to individuals whose certification has been renewed.

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

Filed with the Office of the Secretary of State on November 16, 2023.

TRD-202304303

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Earliest possible date of adoption: December 31, 2023

For further information, please call: (512) 936-3841

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CHAPTER 467. FIRE MARSHAL  
SUBCHAPTER A. MINIMUM STANDARDS  
FOR BASIC FIRE MARSHAL CERTIFICATION

### 37 TAC §467.3, §467.5

The Texas Commission on Fire Protection (commission) proposes amendments to 37 Texas Administrative Code Chapter 467, Fire Marshal, §467.3, Minimum Standards for Basic Fire Marshal Certification, and §467.5, Examination Requirement.

#### BACKGROUND AND PURPOSE

The proposed amendments are initiated because of a change in the examination requirements for Basic Fire Marshal as reflected in the proposed §467.5. Proposed changes in §467.3 correct grammatical errors.

#### FISCAL NOTE IMPACT ON STATE AND LOCAL GOVERNMENT

Michael Wisko, Agency Chief, has determined that for each year of the first five-year period, the proposed amendments are in effect, there will be no significant fiscal impact to state government or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4).

#### PUBLIC BENEFIT AND COST NOTE

Mr. Wisko has also determined under Texas Government Code §2001.024(a)(5) that for each year of the first five years the amendments are in effect the public benefit will be accurate, clear, and concise rules.

#### LOCAL ECONOMY IMPACT STATEMENT

There is no anticipated effect on the local economy for the first five years that the proposed amendments are in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and 2001.024(a)(6).

#### ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments. Therefore, no economic impact statement or regulatory flexibility analysis, as provided by Texas Government Code §2006.002, is required.

#### GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2006.0221 that during the first five years the amendments are in effect:

- (1) the rules will not create or eliminate a government program;
- (2) the rules will not create or eliminate any existing employee positions;
- (3) the rules will not require an increase or decrease in future legislative appropriation;
- (4) the rules will not result in a decrease in fees paid to the agency;
- (5) the rules will not create a new regulation;
- (6) the rules will not expand a regulation;
- (7) the rules will not increase the number of individuals subject to the rule; and
- (8) the rules are not anticipated to have an adverse impact on the state's economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### COSTS TO REGULATED PERSONS

The proposed amendments do not impose a cost on regulated persons, including another state agency, a special district, or a local government, and, therefore, is not subject to Texas Government Code §2001.0045.

#### ENVIRONMENTAL IMPACT STATEMENT

The commission has determined that the proposed amendments do not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

#### REQUEST FOR PUBLIC COMMENT

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register*, to Michael Wisko, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768, or e-mailed to amanda.khan@tcfp.texas.gov.

#### STATUTORY AUTHORITY

The amended rule is proposed under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also proposed under Texas Government Code §419.032, which authorizes the commission to adopt rules establishing the requirements for certification; and §419.036, which authorizes the commission to adopt rules establishing the requirements for certification.

#### CROSS-REFERENCE TO STATUTE

No other statutes, articles, or codes are affected by these amendments.

#### §467.3. *Minimum Standards for Basic Fire Marshal Certification.*

In order to be certified as a Basic Fire Marshal, an individual must:

- (1) hold Basic Fire Inspector certification through the Commission [~~commission~~]; and
- (2) hold Basic Fire Investigator or Basic Arson Investigator certification through the Commission [~~commission~~]; and
- (3) hold Fire and Life Safety Educator I certification through the Commission [~~commission~~]; and
- (4) complete a Commission-approved [~~commission-approved~~] Fire Marshal program and successfully pass the Commission [~~commission~~] examination as specified in Chapter 439 of this title (relating to Examinations for Certification); and An approved Fire Marshal program must consist of the following:
  - (5) [~~An approved Fire Marshal program must consist of the~~] completion of a Commission-approved [~~commission-approved~~] Fire Marshal Curriculum as specified in Chapter 15 of the Commission's [~~commission's~~] Certification Curriculum Manual.

#### §467.5. *Examination Requirements* [~~Requirement~~].

- (a) Examination requirements in Chapter 439 of this title (relating to Examinations for Certification) must be met to receive Basic Fire Marshal certification.

(b) Individuals will be permitted to take the Commission examination for Basic Fire Marshal certification by documenting the following:

- (1) Basic Inspector certification through the Commission [and Basic Fire Investigator]; and
- (2) Basic Fire Investigator or Basic Arson Investigator certification through the Commission; and
- (3) Fire and Life Safety Educator I certification through the Commission; or
- (4) the equivalent IFSAC seals and completing a Commission-approved Basic Fire Marshal curriculum.

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

Filed with the Office of the Secretary of State on November 17, 2023.

TRD-202304310

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Earliest possible date of adoption: December 31, 2023

For further information, please call: (512) 936-3841



## PART 15. TEXAS FORENSIC SCIENCE COMMISSION

### CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

The Texas Forensic Science Commission (Commission) proposes rulemaking to 37 Texas Administrative Code Chapter 651 DNA, CODIS, Forensic Analysis, and Crime Laboratories, Subchapter A, Accreditation, amendments to §§651.3, 651.8 and 651.11; Subchapter B, Accreditation-Related Actions, amendments to §§651.101 - 651.104; new §651.105; and the repeal of Subchapter B, Accreditation-Related Actions and Procedure for Hearing Appeal, §651.105 and §651.106, Subchapter C, Forensic Analyst Licensing Program, repeal of §651.216; Subchapter D, Procedure for Processing Complaints and Laboratory Self-Disclosures, amendments to §§651.305 - 651.308, the repeal of §651.309 and proposes new Subchapter E, Appeals, §651.402. Some changes are responsive to the 88th Texas Legislature's passage of SB 991 and HB 3474, which clarify the Commission's existing appeals process to allow a crime laboratory to appeal to the Judicial Branch Certification Commission any determination that the laboratory has committed professional negligence or professional misconduct, or otherwise violated a rule or order of the Commission.

**Background and Justification.** Under the revised rules, both forensic analyst licensees and crime laboratories subject to the Commission's jurisdiction may appeal disciplinary actions, findings of professional negligence or professional misconduct or violations of the code of professional responsibility, or other rules or orders of the Commission to the Judicial Branch Certification Commission. Before the passage of SB 991 and HB 3474, the Code of Criminal Procedure only provided an appeals process for *forensic analyst licensing disciplinary actions*. The

Commission also makes other non-substantive edits to its accreditation rules that provide clarity to the Commission's process for initiating accreditation-related actions and that correspond with the changes to its appeals process, including clarification that the Commission may suspend the accreditation of a crime laboratory. The rulemaking also provides that in investigations in which an investigative panel are deemed unnecessary, the Commission must instruct staff to conduct the investigation, a practice already in place by the Commission but clarified in the rule proposal. The rulemaking further clarifies the Commission's General Counsel may make recommendations to the Commission on the dismissal of certain complaints that fall outside of the Commission's jurisdiction. Finally, the rulemaking replaces the former process for stipulated agreements of appeals with a similar process for disposition by agreement. These amendments are necessary to reflect adoptions made by the Commission at its July 21, 2023, quarterly meeting at which the Commission voted to incorporate changes to its administrative rules responsive to the legislative changes.

**Fiscal Note.** Leigh M. Tomlin, Associate General Counsel of the Commission, has determined that for each year of the first five years the proposal is in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There is no anticipated effect on local employment or the local economy as a result of the proposal. There is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the proposed rulemaking. The rules effectuate revisions to the Commission's appeals process responsive to legislative changes applicable to the Commission's enabling act, Code of Criminal Procedure, Article 38.01.

**Rural Impact Statement.** The Commission expects no adverse economic effect on rural communities as the rules do not impose any direct costs or fees on municipalities in rural communities.

**Public Benefit/Cost Note.** Ms. Tomlin has also determined that for each year of the first five years the proposal is in effect, the anticipated public benefit is a uniform and clear appeals process for crime laboratories and forensic analyst licensees subject to the Commission's jurisdiction. There is no economic cost to persons required to comply with the rules in response to the changes proposed by the rulemaking.

**Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses.** As required by the Government Code § 2006.002(c) and (f), Ms. Tomlin has determined that the proposal will not have an adverse economic effect on any small or micro-business because there are no anticipated economic costs to any person or crime laboratory. The revised rules provide a process for crime laboratories to appeal determinations of professional negligence or misconduct, violations of the code of professional responsibility or other rules or orders issued by the Commission to the Judicial Branch Certification Commission.

**The Takings Impact Assessment.** Ms. Tomlin has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

**Government Growth Impact Statement.** Ms. Tomlin has determined that for the first five-year period, implementation of the proposal will have no government growth impact. Pursuant to

the analysis required by Government Code 2001.0221(b), 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 increase or decrease future legislative appropriations to the agency; 4) the proposed rules do not require a fee; 5) the proposed rules do not create a new regulation; 6) the proposed rules do not expand, limit, or repeal an existing regulation; 7) the proposed rules do not increase or decrease the number of individuals subject to the rule's applicability; and 8) the proposed rules have no effect on the state's economy.

**Environmental Rule Analysis.** The Commission has determined that the proposed rules are not brought with specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Commission asserts that the proposed rules are not a "major environmental rule," as defined in Government Code §2001.0225. As a result, the Commission asserts the preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

**Request for Public Comment.** The Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Tomlin, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by January 5, 2023, to be considered by the Commission.

## SUBCHAPTER A. ACCREDITATION

### 37 TAC §§651.3, 651.8, 651.11

**Statutory Authority.** The rules are proposed under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to investigate and regulate crime laboratories and forensic analysts under Article 38.01 §§ 4, 4-a, and 4-d. It also conforms to changes made by SB 991 and HB 3474.

**Cross-reference to statute.** The proposal affects Tex. Code Crim. Proc. art. 38.01.

#### §651.3. *Recognition Process.*

The Commission must [shall] recognize an accrediting body under this section if the Commission determines that the accrediting body:

(1) issues an accreditation that is accepted throughout the relevant scientific community and appropriate or available to a crime laboratory or other entity that conducts forensic analyses of physical evidence for use in criminal proceedings;

(2) has established adequate accreditation criteria reasonably likely to facilitate [ensure] trustworthy forensic analysis;

(3) requires a periodic competency audit or review of the personnel, facilities, and procedures employed by a crime laboratory or other entity to conduct a forensic analysis; and

(4) withholds, grants, or withdraws its accreditation of a crime laboratory or other entity based on its own determination of a reasonable likelihood of meaningful corrective action for each deficiency noted during the periodic audit or review.

#### §651.8. *Full Commission Accreditation.*

(a) **Issuance and renewal.** The Commission may issue or renew accreditation under this section.

(b) **Application.** An applicant for full Commission accreditation must [shall] complete and submit to the Commission a current Laboratory Accreditation Form and attach copies of the following:

(1) an accreditation certificate and letter of notification of accreditation from a recognized accrediting body; and

(2) each document provided by the recognized accrediting body that identifies the discipline or category of analysis for which the laboratory has received accreditation and any limitation or restriction regarding that accreditation.

(c) **Additional information.** The Commission may require additional information to properly evaluate the application either as part of the original application or as supplemental information.

(d) **Reports to the Commission:**[;]

(1) If accredited by ANAB, a laboratory must [shall] provide the Commission with a copy of each accreditation assessment report, including but not limited to any on-site surveillance assessment report, off-site surveillance assessment report, scope extension assessment report, Federal Bureau of Investigation Quality Assurance Standards Audit for Forensic DNA Testing Laboratories report, ABFT Checklist report, as well as any management system's internal or external audit report, or any other reports required pursuant to compliance with accreditation by the laboratory within 5 days of completion or receipt of the report [Annual Accreditation Review Report]. If accredited by A2LA [another recognized accrediting body], a laboratory must [shall] provide the Commission with a copy of each equivalent report within 5 days of completion or receipt of the report [annual accreditation assessment].

(2) A laboratory must [shall] provide the Commission with a copy of all substantive communications [correspondence and each report or communication] between the laboratory and the recognized accrediting body. The laboratory must [shall] submit the copy to the Commission no later than 10 [30] days after the date the laboratory receives or transmits the correspondence, report, or communication.

(3) A laboratory that either voluntarily makes a decision to discontinue accreditation or is informed by its accrediting body of the accrediting body's decision to discontinue its accreditation in [discontinues] a specific forensic discipline or category of analysis[;]

[~~(A)~~] [~~if known beforehand,~~] must [should] submit written notification to the Commission no later than [at least 30 days before the effective date of the discontinuation; or]

[~~(B)~~] 5 business days after [if unknown beforehand, shall submit written notification to the Commission at least] the effective date of the discontinuation.

(e) **Federal forensic laboratories.** A federal forensic laboratory is deemed to be accredited by the Commission without application provided that the laboratory is accredited by a recognized accrediting body as provided under §651.4 of this subchapter (relating to List of Recognized Accrediting Bodies). A laboratory deemed accredited is not subject to the reporting requirements of this subchapter or the processes provided under Subchapter B of this chapter (relating to Complaints, Special Review, and Administrative Action).

#### §651.11. *Automatic Withdrawal or Suspension of Commission Accreditation.*

The Commission must [shall] automatically withdraw, suspend, or designate as inactive:

(1) the full Commission accreditation for a laboratory, discipline, or subdiscipline at the date and time that the recognized accrediting body withdraws, suspends, or designates as inactive the [its relevant] laboratory, discipline, or subdiscipline accreditation; or

(2) the provisional Commission accreditation for a laboratory, discipline, or subdiscipline at the date and time that the recognized

accrediting body notifies the Commission that the laboratory has withdrawn its application for the relevant laboratory, discipline, or subdiscipline accreditation.

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

Filed with the Office of the Secretary of State on November 13, 2023.

TRD-202304213

Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

Earliest possible date of adoption: December 31, 2023

For further information, please call: (512) 784-0037



## SUBCHAPTER B. ACCREDITATION-RELATED ACTIONS [AND PROCEDURE FOR HEARING AND APPEAL]

### 37 TAC §§651.101 - 651.105

Statutory Authority. The rules are proposed under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to investigate and regulate crime laboratories and forensic analysts under Article 38.01 §§ 4, 4-a, and 4-d. It also conforms to changes made by SB 991 and HB 3474.

Cross-reference to statute. The proposal affects Tex. Code Crim. Proc. art. 38.01.

#### §651.101. *[Complaint] Process for Initiating Accreditation-Related Actions.*

(a) ~~[Question or complaint.]~~ If the Commission learns of a fact or circumstance ~~from a laboratory's recognized accrediting body,~~ or receives a third-party complaint regarding the reliability of a laboratory, or the validity of a procedure, examination, or test conducted by the laboratory since the date of application for Commission accreditation, the Commission may take any of the following actions:

(1) ~~coordinate with the laboratory's recognized accrediting body regarding information needed to address the issue(s) and any additional steps to facilitate resolution of the issue(s); [if a complaint has been filed, communicate further with the complainant to assess if further action is merited;]~~

(2) refer the matter to the laboratory's director for evaluation, audit, correction, or other appropriate action;

(3) initiate an audit under §651.102 of this title (relating to ~~[Commission] Audit~~);

(4) issue a letter to the laboratory:

(A) requesting an immediate response and explanation of the matter;

(B) requiring the laboratory permit or arrange for an immediate inspection or audit of the matter; or

(C) explaining the action to be taken by the Commission in the matter;

(5) ~~notify [or refer the matter to] a law enforcement agency or prosecutor with jurisdiction [and recommend appropriate criminal action]; and~~

~~[(6) refer the matter to a district judge and recommend appropriate action to convene a court of inquiry under Code of Criminal Procedure, Chapter 52; and]~~

~~(6) [(7)] any other actions deemed appropriate by the Commission.~~

~~[(b) Source and scope. A question or complaint may be raised by any source, including an individual, entity, or audit or an investigation by the Commission pursuant to §651.301(a)(3) or (b) of this chapter. The scope of any action taken or proposed by the Commission under this section shall be determined by the Commission, based on the nature of the question or complaint.]~~

~~(b) [(e)] Records. The Commission may maintain a public record of a laboratory's accreditation or approval status.~~

(1) The Commission may maintain in [on] the public record a notation of an action taken under this subchapter, including a question, complaint or audit.

(2) A question, complaint, or audit is public information when in the possession of the Commission, except as provided by the Code of Criminal Procedure Article 38.01 §10 or other applicable law.

§651.102. *[Commission] Audit of Quality Assurance Matters.*

(a) The Commission may, at any reasonable time, enter the premises or audit the records, reports, procedures, or other quality assurance matters of a crime laboratory that is accredited or seeking accreditation under this chapter.

~~(b) [(a)] If the Commission determines there is reasonable cause to believe a laboratory has failed to maintain quality assurance standards as [provided under the laboratory's specific policy] required by its recognized accrediting body [or the FBI DNA Quality Assurance Audit Document], or has otherwise engaged in acts or omissions [conduct] raising questions about the reliability or validity of the forensic analysis performed in the laboratory, or has violated any rule in this chapter, the Commission may take appropriate action, including one or more of the following:~~

(1) direct the laboratory to conduct an internal audit and implement appropriate corrective action;

(2) order the laboratory to obtain, at its own expense, an [a special] external audit by a subject matter expert [an auditor] approved by the Commission and the laboratory's recognized accrediting body and provide the expert's [that] report to the Commission within a reasonable time frame determined by the Commission;

~~[(3) notify the laboratory that further forensic analysis is not approved by Commission;]~~

(3) ~~[(4)] initiate an evaluation of continued accreditation [under Subchapter A of this chapter (relating to Accreditation)]; or~~

~~(4) [(5)] any other actions deemed appropriate by the Commission.~~

(c) [(b)] An audit under this subchapter must [shall] comply with minimum standards for audits or inspections as established by the Commission.

[(e) The Commission may at any reasonable time enter the premises or audit the records, reports, procedures, or other quality assurance matters of a crime laboratory that is accredited or seeking accreditation under this chapter.]



(d) A laboratory, facility, or entity that must be accredited under Code of Criminal Procedure, Article 38.01 §4-d must [shall], as part of the accreditation process, agree to consent to any request for cooperation by the Commission that is made as part of the exercise of the Commission's duties under this subchapter.

(e) The Commission may require a laboratory, facility, or entity required to be accredited under Code of Criminal Procedure, Article 38.01 §4-d to pay any costs incurred for accrediting, inspecting, or auditing to ensure compliance with the accreditation process.

*§651.103. Corrective Action Plan.*

(a) If a laboratory is subject to an [a Commission] audit that resulted in a determination that corrective action is needed [an adverse finding by the Commission], the laboratory shall propose a corrective action plan and submit the plan to the Commission within 30 days from the date [that] the laboratory receives the subject matter expert's report[audit]. [If the laboratory has been notified that further forensic analysis is suspended, the plan should identify the date that the laboratory intends to reinstate approved forensic analysis.]

(b) A proposed corrective action plan under this section must fully address each adverse finding and identify appropriate corrective action.

(c) The Commission must [shall] promptly review a proposed corrective action plan and take the following action:

- (1) approve the corrective action plan; or
- (2) decline to approve the corrective plan and identify necessary revisions to the plan.

(d) The Commission must [shall] notify the laboratory in writing of approval or disapproval of the audit response. If not approved, the Commission must [shall] notify the laboratory of required corrective action, and the laboratory must [shall] implement the corrective action in a timely manner specified in the notification, except as provided by subsection (e) of this section.

(e) A laboratory must [shall] implement and complete an approved corrective action plan described in subsection (d) of this section, unless the laboratory demonstrates good cause for extension to the Commission before the due date for completion.

*§651.104. Withdrawal or Suspension of Commission Accreditation for Statute or Rule Violation.*

(a) Withdrawal or Suspension for Violation. The Commission by a majority vote of a quorum of Commission members may withdraw or suspend accreditation of [for] a laboratory, discipline, or subdiscipline if the laboratory:

- (1) violates article 38.01 of the Code of Criminal Procedure;
- (2) fails to respond meaningfully within five business days to a letter issued by the Commission under this subchapter;
- (3) fails to timely submit to an audit or other internal or external review required under this subchapter; [or]
- (4) fails to allow or substantially interferes with an inspection or audit conducted under this subchapter; or
- (5) violates the code of professional responsibility set forth in subchapter C, §651.219.

(b) Withdrawal or Suspension Pursuant to a Finding or Recommendation from an Audit or Commission Investigation. The Commission by a majority vote of a quorum of Commission members, may withdraw or suspend the accreditation for a laboratory, discipline, or

subdiscipline if the Commission determines the integrity, reliability, or validity of the laboratory, discipline, or forensic analysis can no longer be ensured pursuant to a finding or recommendation that resulted from:

(1) an audit by a subject matter expert conducted under §651.102 of this subchapter (relating to [Commission] Audit of Quality Assurance Matters); or

(2) any other [an] investigation by the Commission pursuant to this chapter or the Code of Criminal Procedure, Article 38.01 §4.

*§651.105. Reinstatement of Commission Accreditation.*

(a) An accredited laboratory that has had Commission accreditation withdrawn, suspended, or designated as inactive automatically under §651.11 of this title based on the actions of the laboratory's recognized accrediting body (relating to Automatic Withdrawal or Suspension of Commission Accreditation) may have its accreditation reinstated by the Commission, if the laboratory shows that it presently meets or exceeds the quality assurance standards required by the laboratory's recognized accrediting body.

(b) An accredited laboratory that has had Commission accreditation withdrawn or suspended under §651.104 of this title (relating to Withdrawal or Suspension of Commission Accreditation) may have its accreditation reinstated by the Commission. If the laboratory:

- (1) shows that it presently meets or exceeds the quality assurance standards required by the laboratory's recognized accrediting body;
- (2) demonstrates resolution or pending resolution of all non-conformities or other issues identified by the Commission; and
- (3) the Commission or its Designee determines that issues identified with respect to the integrity, reliability, or validity of the forensic analysis, discipline, or subdiscipline for which accreditation was withdrawn or suspended were resolved by the laboratory to the extent possible.

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

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**SUBCHAPTER B. ACCREDITATION-RELATED ACTIONS AND PROCEDURE FOR HEARING AND APPEAL**

**37 TAC §651.105, §651.106**

Statutory Authority. The repeals are proposed under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to investigate and regulate crime laboratories and forensic analysts under Article 38.01 §§ 4, 4-a, and 4-d. It also conforms to changes made by SB 991 and HB 3474.

Cross-reference to statute. The proposal affects Tex. Code Crim. Proc. art. 38.01.

§651.105. *Procedure for Hearing on and Appeal of an Adverse Final Accreditation Decision or Final Accreditation Action by the Commission.*

§651.106. *Reinstatement of Commission Accreditation.*

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## SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

### 37 TAC §651.216

Statutory Authority. The rule is proposed under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to investigate and regulate crime laboratories and forensic analysts under Article 38.01 §§ 4, 4-a, and 4-d. It also conforms to changes made by SB 991 and HB 3474.

Cross-reference to statute. The proposal affects Tex. Code Crim. Proc. art. 38.01.

§651.216. *Disciplinary Action.*

~~[(a) The Commission may take disciplinary action against a license holder or applicant for a license under certain limited circumstances as set forth in Article 38.01, Code of Criminal Procedure.]~~

~~(a) [(b) Professional Misconduct Finding. On a determination by the Commission that a license holder or applicant for a license has committed professional misconduct in accordance with the definition provided in §651.202 of this subchapter (relating to Definitions) and under Article 38.01, Code of Criminal Procedure or violated Article 38.01, Code of Criminal Procedure, or a rule or order of the Commission, the Commission may:~~

- ~~(1) revoke or suspend the person's license;~~
- ~~(2) refuse to renew the person's license;~~
- ~~(3) reprimand the license holder; or~~
- ~~(4) deny the person a license.~~

~~(b) [(e) Probation. The Commission may place on probation a person whose license is suspended. If a license suspension is probated, the Commission may require the license holder to:~~

- ~~(1) report regularly to the Commission on matters that are the basis of the probation; or~~
- ~~(2) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the Commission in those areas that are the basis of the probation.~~

~~(c) [(d) Factors in Determining Possible Adverse Action.~~

~~(1) In determining the appropriate disciplinary action against a license holder or in assessing whether a prospective applicant must [shall] be granted a license, the Commission may consider the following factors:~~

- ~~(A) the seriousness of the violation;~~
- ~~[(B) the prevalence of misconduct by the individual;]~~
- ~~(B) [(C)] the individual's disciplinary [conduct] history[; including any investigative history by the Commission];~~
- ~~(C) [(D)] the harm or potential harm to the laboratory or criminal justice system as a whole;~~
- ~~(D) [(E)] attempted concealment of the act by the individual;~~
- ~~(E) [(F)] any other relevant factors.~~

~~(2) The Commission considers the following factors in determining whether a less severe or less restrictive disciplinary action is warranted:~~

- ~~(A) candor in addressing the violation, including self-reported and voluntary admissions of the misconduct or violation;~~
- ~~(B) acknowledgement of wrongdoing and willingness to cooperate with the Commission;~~
- ~~(C) changes made by the individual to ensure compliance and prevent future misconduct;~~
- ~~(D) rehabilitative potential;~~
- ~~(E) other relevant circumstances reducing the seriousness of the misconduct; or~~
- ~~(F) other relevant circumstances lessening responsibility for the misconduct.~~

~~(3) The license holder or license applicant will [shall] have the burden to present evidence regarding any mitigating factors that may apply.~~

~~(4) This rule will [shall] not be construed to deny any licensee or applicant subject to disciplinary action by the Commission the right to introduce mitigating evidence in a hearing before the Judicial Branch Certification Commission. This rule also will [shall] not be construed to deny the Texas Forensic Science Commission the right to introduce any evidence supporting any of the factors described above in a hearing before the Judicial Branch Certification Commission.~~

~~(d) A license holder has a right to notice and appeal to the Judicial Branch Certification Commission as described in Subchapter E of this chapter.~~

~~[(e) Disciplinary Proceedings by the Judicial Branch Certification Commission. The Commission shall give written notice by certified mail of a determination described by subsection (a) of this section to a license holder who is the subject of the determination. The notice must:]~~

- ~~[(1) include a brief summary of the alleged misconduct or violation;]~~
- ~~[(2) state the disciplinary action taken by the Commission; and]~~
- ~~[(3) inform the license holder of the license holder's right to a hearing before the Judicial Branch Certification Commission on the occurrence of the misconduct or violation, the imposition of the disciplinary action, or both. ]~~

[(f) Hearing Request. Not later than the 20th day after the date the license holder receives the notice under subsection (d) of this section, the license holder may request a hearing by submitting a written request to the Judicial Branch Certification Commission. If the license holder fails to timely submit a request, the Commission's disciplinary action becomes final and is not subject to review by the Judicial Branch Certification Commission.]

[(g) Judicial Branch Certification Commission Hearing. If the license holder requests a hearing, the Judicial Branch Certification Commission shall conduct a hearing to determine whether there is substantial evidence to support the determination under subsection (a) of this section that the license holder committed professional misconduct or violated this subchapter or a Commission rule or order under this subchapter. If the Judicial Branch Certification Commission upholds the determination, the Judicial Branch Certification Commission shall determine the type of disciplinary action to be taken. The Judicial Branch Certification Commission shall conduct the hearing in accordance with the procedures provided by Subchapter B, Chapter 153, Government Code, as applicable, and the rules of the Judicial Branch Certification Commission.]

[(h) License Status.]

[(1) If a license holder makes timely and sufficient application for the renewal of a license, the existing license does not expire until the application has been finally determined by the Commission. If the application is denied or the terms of the new license are limited, the existing license does not expire until the last day for seeking review of a Commission decision or a later date fixed by order of the Judicial Branch Certification Commission or Administrative Regional Presiding Judges.]

[(2) A revocation, suspension, annulment, or withdrawal of a license is not effective unless, before institution of Commission proceedings:]

[(A) the Commission gives notice by personal service or by registered or certified mail to the license holder of facts or conduct alleged to warrant the intended action; and]

[(B) the license holder is given an opportunity to show compliance with all requirements of law for the retention of the license.]

[(3) A Forensic Analyst License remains valid unless it expires without timely application for renewal, is amended, revoked, suspended, annulled or withdrawn, or the denial of a renewal application becomes final. The term or duration of a license is tolled during the period the license is subjected to review by the Judicial Branch Certification Commission or Administrative Regional Presiding Judges. However, the term or duration of a license is not tolled if, during review by the Judicial Branch Certification Commission or Administrative Regional Presiding Judges, the licensee engages in the activity for which the license was issued.]

[(i) Interpreters for Deaf or Hearing Impaired Parties and Witnesses.]

[(1) In an appeal of a disciplinary action by the Commission, the Commission shall provide an interpreter whose qualifications are approved by the Texas Department of Assistive and Rehabilitative Services to interpret the proceedings for a party or subpoenaed witness who is deaf or hearing impaired.]

[(2) In this section, "deaf or hearing impaired" means having a hearing impairment, whether or not accompanied by a speech impairment, that inhibits comprehension of the proceedings or communication with others.]

[(j) Informal Disposition of Disciplinary Action Appeals. Unless precluded by law, an informal disposition may be made of an appeal of a disciplinary action by the Commission by:]

- [(1) stipulation;]
- [(2) agreed settlement;]
- [(3) consent order; or]
- [(4) default.]

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## SUBCHAPTER D. PROCEDURE FOR PROCESSING COMPLAINTS AND LABORATORY SELF-DISCLOSURES

### 37 TAC §§651.305 - 651.308

Statutory Authority. The rules are proposed under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to investigate and regulate crime laboratories and forensic analysts under Article 38.01 §§ 4, 4-a, and 4-d. It also conforms to changes made by SB 991 and HB 3474.

Cross-reference to statute. The proposal affects Tex. Code Crim. Proc. art. 38.01.

§651.305. *Complaint and Self-disclosure Screening.*

(a) Complaints and self-disclosures will [shall] be considered initially through the CSC [CĐSC]. The chair of the CSC [CĐSC] must [shall] present the complaints and disclosures before the Commission with a recommendation for disposition. The CSC [CĐSC] may recommend the following dispositions:

- (1) dismiss the complaint or disclosure;
- (2) accept the complaint or disclosure [and submit for action by an Investigation Panel];
- (3) recommend the Commission use its discretion to review the matter for educational purposes;
- (4) recommend no further action by the laboratory is necessary at this time; or
- (5) take such other action as appropriate.

(b) The CSC [CĐSC] may assign staff to collect preliminary information related to a complaint or self-disclosure, including research into the status of any underlying criminal or civil case and whether the complaint or self-disclosure addresses a forensic analysis subject to investigation by the Commission.

(c) An actor named in a complaint or self-disclosure and the involved accredited laboratory, facility or entity may be given an opportunity but is not required to provide a written reply, offering any reasons for or against accepting the complaint or disclosure for investigation.

(d) The following factors may be considered when a complaint or self-disclosure is screened by the CSC [~~CDSC~~] and considered by the Commission:

- (1) whether the Commission has investigative jurisdiction;
- ~~[(2) the availability of the person who was the defendant in the criminal action associated with the forensic evidence;]~~
- (2) ~~[(3)]~~ the availability of any actor who conducted any part of the forensic analysis;
- (3) ~~[(4)]~~ the length of time between the forensic analysis and the complaint or disclosure;
- (4) ~~[(5)]~~ the availability of records in connection with the forensic analysis and any associated litigation;
- (5) ~~[(6)]~~ the status of any criminal case or civil litigation associated with the forensic analysis;
- (6) ~~[(7)]~~ the potential for additional relevant forensic analysis;
- (7) ~~[(8)]~~ any other factor that would enhance or detract from a complete and accurate investigation of the forensic analysis and any alleged negligence or misconduct;
- (8) ~~[(9)]~~ the availability of funds to complete an investigation; and
- (9) ~~[(10)]~~ the opportunity for the investigation and report to educate the forensic science community, advance the standards and training associated with such a forensic analysis or identify legislative recommendations for strengthening a field of forensic science.

(e) Upon reaching a recommended initial disposition for a complaint or self-disclosure, the CSC [~~CDSC~~] shall provide a summary of the recommendation to the Commission's presiding officer for presentation to a quorum of Commissioners.

(f) Following action by the Commission [a quorum of Commissioners] regarding the disposition of any complaint or self-disclosure, the Commission must [shall] notify the complainant, actor involved in the forensic analysis and the laboratory, facility, or entity of the disposition.

(g) To ensure thorough consideration of all complaints and self-disclosures, complainants and laboratories submitting self-disclosures should make such submissions at least fifteen (15) business days before a particular quarterly Commission meeting to have the complaint or self-disclosure considered at that meeting. The Commission reserves the right to consider any complaint or disclosure that does not meet the 15-day deadline at the next quarterly meeting.

(h) A Commission member may, by formal motion, request that the full Commission reconsider a dismissed complaint or disclosure if the member identifies new evidence of professional negligence or professional misconduct that was not previously considered by the Commission. The new evidence may be derived from either:

- (1) information in the existing record that the complainant believes was not considered by the Commission previously; or

(2) new information brought to the Commission's attention that was not previously considered by the Commission.

(i) A motion described under subsection (h) of this section may be made only if the Commissioner believes in good faith that the information will have a material impact on the Commission's analysis of the complaint or disclosure pursuant to its screening criteria.

(j) After considering the member's motion, the Commission must [shall] vote to:

- (1) affirm the original decision to dismiss the complaint or self-disclosure; or
- (2) re-open the complaint or disclosure.

(k) The Commission must [shall] notify the complainant and the appropriate laboratory, facility or entity in writing of the results of the Commission's vote under subsection (h) of this section.

(l) The Commission must [shall] conduct an appropriate investigation of a complaint or disclosure reopened under subsection (j)(2) of this section.

*§651.306. Dismissal for Lack of Jurisdiction.*

(a) Autopsy-related complaints. The Commission's General Counsel may make a recommendation that the Commission dismiss complaints related to the portion of an autopsy conducted by a medical examiner or licensed physician as falling outside the Commission's statutory jurisdiction [~~without bringing the complaint before the Complaint Screening Committee or a quorum of Commissioners for consideration~~].

(b) DNA mixture complaints. The General Counsel may recommend that the Commission refer complaints and requests involving DNA mixtures to the statewide DNA Mixture Triage Team or other responsible entity [~~without bringing the complaints and requests before the Complaint Screening Committee or a quorum of Commissioners for consideration~~]. The General Counsel must [shall] provide the total number of complaints and inquiries referred to the statewide DNA Mixture Triage Team to the Commission at each quarterly meeting during which such referrals are made.

(c) Non-forensic analysis complaints. The General Counsel may recommend that the Commission dismiss the following categories of complaints [~~without bringing the complaints before the Complaint Screening Committee or a quorum of Commissioners for consideration~~]:

- (1) those the General Counsel does not consider to include a medical, chemical, toxicologic, ballistic, or other expert examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action;
- (2) those the General Counsel believes constitute a presumptive test performed for the purpose of determining compliance with a term or condition of community supervision or parole and conducted by or under contract with a community supervision and corrections department, the parole division of the Texas Department of Criminal Justice, or the Board of Pardons and Paroles; or
- (3) those the General Counsel believes constitute an expert examination or test conducted principally for the purpose of scientific research, medical practice, civil or administrative litigation, or other purpose unrelated to determining the connection of the evidence to a criminal action.

(d) Right to re-open. Any Commission member has a right to reopen cases dismissed pursuant to subsections (a) - (c) of this section. Commission staff must present a summary ~~[maintain a list] of complaints dismissed under this subsection to the Commission for approval by a majority of a quorum of commissioners at each quarterly meeting [a quorum of commissioners].~~

*§651.307. Investigative Panels.*

(a) Panel procedure. After ~~the Commission votes [a quorum of Commissioners vote]~~ to conduct an investigation, for complex investigations, the Commission's presiding officer may ~~[shall]~~ nominate at least three members of the Commission to an Investigation Panel ("Panel") subject to the approval of a majority of a quorum of Commissioners. ~~[; and the Investigation Panel shall elect one of the members as chair of the Panel].~~

(b) Panel investigation. ~~[A Panel shall coordinate any investigation voted upon by the Commission.]~~ For investigations in which a Panel is created, the ~~[; The]~~ Panel initially ~~must [shall]~~ specify the focus of the investigation, communicate with the entities or individuals involved in the investigation, and collect any appropriate records. The Panel also may initiate contact with any governmental agency, individual, or entity to inquire about assistance in a full investigation. The Panel may:

- (1) collect and review appropriate documents as necessary;
- (2) conduct interviews with appropriate individuals;
- (3) issue notification of results or refer the case to a governmental or other relevant agency or accrediting body, pursuant to a written communication, memorandum of understanding, or other appropriate agreement between the agencies;
- (4) contract with a subject matter expert if needed; or
- (5) take such other action as appropriate.

(c) ~~All Panel meetings [Limitation on panel meetings held by telephone. Commission Panels may meet by telephone for information-gathering purposes only. However, all deliberative discussions by Panels] must [shall] be held in in-person meetings or by videoconference, in accordance with the Texas Open Meetings Act.~~

(d) Investigations Facilitated by Staff. For investigations in which an Investigative Panel is deemed unnecessary, the Commission must instruct staff to conduct the investigation, which must include the same activities described in §651.307(b).

(e) ~~[(d)]~~ Referral of investigative cases to the Office of Capital and Forensic Writs. The Commission may review and refer cases that are the subject of an investigation under §651.301(a) or (b) of this subchapter to the Office of Capital and Forensic Writs in accordance with Section 78.054(b), Government Code.

(1) General procedure for referral to the Office of Capital and Forensic Writs. A majority of a quorum of Commissioners may recommend referral of a case accepted for investigation by the Commission under §651.301(a) or (b) of this subchapter (relating to Purpose) to the Office of Capital and Forensic Writs.

(2) Written referral and corresponding documents. The Commission Presiding Officer or Designee ~~must [shall]~~ provide each recommended case referral in writing, including all documents in the Commission's possession related to the case and any investigative report issued, to the Office of Capital and Forensic Writs Director or Designee for determination regarding potential legal representation no later than ten (10) business days from the date the Commission recommends referral.

*§651.308. Investigative Reports.*

(a) Written report requirements. If the Commission approves a full investigation, the Panel or Staff shall coordinate the completion of the investigation and draft a written report, including a recommendation for final disposition to the Commission. ~~[a quorum of Commissioners. The Panel may delegate the initial draft of the report to Commission staff.].~~ An investigative report or recommendation is not final and does not represent the conclusions of the Commission until a final report is adopted and issued by a majority of a ~~[the]~~ quorum of Commissioners. ~~[Following consideration of the recommendation for final disposition from the Investigation Panel, the]~~ The Commission ~~must [shall]~~ issue a report using the criteria set forth in Article 38.01, Code of Criminal Procedure.

(b) Investigations of accredited crime laboratories and accredited forensic disciplines only. For investigations involving accredited crime laboratories and accredited forensic disciplines, the Commission may:

- (1) find there is insufficient credible information to conclude that professional negligence or professional misconduct occurred in the forensic analysis;
- (2) find there is sufficient evidence to conclude that professional negligence or professional misconduct occurred in the forensic analysis;
- (3) require retrospective re-examination of evidence as appropriate;
- (4) require corrective action and follow-up as appropriate.

(c) All Commission investigations. For all Commission investigations, regardless of whether they involve accredited crime laboratories and accredited forensic disciplines, the Commission's report may:

- (1) make observations regarding the integrity and reliability of the forensic analysis conducted;
- (2) identify applicable best practices; and
- (3) make other relevant recommendations.

(d) Any finding by the Commission is not a comment upon the guilt or innocence of any individual and is not necessarily a basis for relief in litigation or in any other forum. Reports of the Commission are not admissible in a civil or criminal action.

(e) The Commission ~~must [shall]~~ make the final report available to the public on the Commission's website and provide a copy, as applicable, to the:

- (1) prosecutor, judge, defendant and defense attorney involved in the underlying criminal case, if any;
- (2) Board of Pardons and Paroles;
- (3) Director of the Department of Public Safety;
- (4) Governor;
- (5) Lieutenant Governor;
- (6) Speaker of the House of Representatives;
- (7) complainant; and
- (8) actor(s) and accredited laboratory, facility, or entity involved in any part of the forensic analysis.

(f) Open records limitation. Pursuant to Code of Criminal Procedure, Article 38.01 §10, information that is filed as part of an allegation of professional misconduct or professional negligence or that is obtained during an investigation of an allegation of professional mis-

conduct or professional negligence is not subject to release until the conclusion of an investigation by the Commission.

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### 37 TAC §651.309

Statutory Authority. The repeal is proposed under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to investigate and regulate crime laboratories and forensic analysts under Article 38.01 §§ 4, 4-a, and 4-d. It also conforms to changes made by SB 991 and HB 3474.

Cross-reference to statute. The proposal affects Tex. Code Crim. Proc. art. 38.01.

*§651.309. Procedure for Hearing on and Appeal of a Final Investigative Report by the Commission Regarding an Individual Not Licensed Under this Chapter or an Entity that Performs Forensic Analysis as the Term is Defined in Article 38.01, Code of Criminal Procedure.*

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

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## SUBCHAPTER E. NOTICE TO AND APPEALS BY LICENSE HOLDERS AND CRIME LABORATORIES

### 37 TAC §651.402

Statutory Authority. The rule is proposed under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to investigate and regulate crime laboratories and forensic analysts under Article 38.01 §§ 4, 4-a, and 4-d. It also conforms to changes made by SB 991 and HB 3474.

Cross-reference to statute. The proposal affects Tex. Code Crim. Proc. art. 38.01.

### §651.402. Notice and Hearing Request.

(a) The Commission must give written notice by certified mail to a license holder or crime laboratory that is the subject of any disciplinary action, finding of professional negligence or professional misconduct, violation of the code of professional responsibility, or violation of another rule or order of the Commission. The notice must:

(1) include a brief summary of the professional negligence, professional misconduct, violation of the code of professional responsibility, or other rule or statutory violation;

(2) state the disciplinary action taken by the Commission;  
and

(3) inform the license holder or crime laboratory of their right to a hearing before the Judicial Branch Certification Commission on the occurrence of the professional negligence or misconduct or rule violation, or the imposition of a disciplinary action.

(b) for purposes of this subchapter, "disciplinary action" against a license holder or crime laboratory includes any of the following actions: revocation or suspension of an individual's license or a crime laboratory's accreditation; refusal to renew an individual's license or a crime laboratory's accreditation; or formal reprimand of a license holder or crime laboratory.

(c) Hearing Request. Not later than the 20th day after the date the license holder or crime laboratory receives the notice under subsection (a) of this section, the license holder or crime laboratory may accept the Commission determination or disciplinary action or request a hearing by submitting a written request to the Judicial Branch Certification Commission. If the license holder or crime laboratory fails to timely submit a request, the Commission's action becomes final and is not subject to review by the Judicial Branch Certification Commission. Hearing requests may be submitted via email to [info@fsc.texas.gov](mailto:info@fsc.texas.gov).

(d) Judicial Branch Certification Commission Hearing. If the license holder or crime laboratory requests a hearing, the Judicial Branch Certification Commission must conduct a hearing to determine whether there is substantial evidence to support the determination under subsection (a) of this section that the negligence, misconduct, or violation occurred. If the Judicial Branch Certification Commission upholds the determination, the Judicial Branch Certification Commission shall determine the type of disciplinary action to be taken. The Judicial Branch Certification Commission must conduct the hearing and any appeal of that Commission's decision, in accordance with the procedures provided by Subchapter B, Chapter 153, Government Code, as applicable, and the rules of the Judicial Branch Certification Commission.

(e) Disposition by Agreement. Any disciplinary matter may be disposed of by agreement, unless precluded by law. The agreement must be in writing and may be in the form of a stipulation, a settlement agreement, or a consent order. The Commission may approve or reject the agreement. If the Commission rejects the agreement, the respondent has a right to a hearing on the disciplinary matter before the Judicial Branch Certification Commission per subsection (d) of this section.

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## CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

### SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

#### 37 TAC §§651.207 - 651.209

The Texas Forensic Science Commission ("Commission") proposes amendments to 37 Texas Administrative Code Chapter §651.207 Forensic Analyst Licensing Requirements, Including License Term, Fee, and Procedure for Denial of Application and Reconsideration, §651.208 Forensic Analyst and Technician License Renewal, and §651.209 Forensic Analyst and Forensic Technician License Expiration and Reinstatement. The amendments change the Commission's forensic analyst and forensic technician license expiration dates to expire on the licensee's birthdate.

**Background and Justification.** Under the revised rules, forensic analyst and forensic technician licenses will expire on the last day of the licensee's birth month after each two-year license cycle, rather than every two years from their initial application. Prior to these changes and the inception of the Commission's forensic analyst licensing program on January 1, 2019, a majority of the Commission's licenses expired at the same time in the even-numbered years in the Fall, placing a heavy administrative burden both on Commission staff and licensees waiting on their licenses to be renewed at the same time. The proposed changes also include a monthly proration of the required fees and continuing forensic education requirements for current and first-time license applicants depending on the number of months in the applicant's first license term. The proposed changes also require all new license applicants to complete the Commission's Mandatory Legal and Professional Responsibility Course. These amendments are necessary to reflect adoptions made by the Commission at its July 21, 2023, quarterly meeting at which the Commission voted to transition to licenses expiring on licensees' birthdates to ease the administrative burden on Commission staff and to require all new license applicants to complete the Commission's Mandatory Legal and Professional Responsibility Course.

**Fiscal Note.** Leigh M. Tomlin, Associate General Counsel of the Commission, has determined that for each year of the first five years the new rules are in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There is no anticipated effect on local employment or the local economy as a result of the proposal. There is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the proposed rule amendments. The amendments change the expiration dates of forensic analyst and forensic technician licensees. The proposal includes a provision addressing the proration of licensing fees for renewing and new applicants for licensure in accordance with the new birthdate expiration schedule, so that the Commission incurs no loss or increase in revenue during the transition to birthdate expirations.

**Rural Impact Statement.** The Commission expects no adverse economic effect on rural communities as the proposal does not impose any direct costs or fees on municipalities in rural communities.

**Public Benefit/Cost Note.** Ms. Tomlin has also determined that for each year of the first five years the rules are in effect, the anticipated public benefit is a more efficient renewal process for forensic analysts and forensic technicians in the State of Texas. There is no economic cost to persons required to comply with the rule in response to the changes proposed by the rulemaking.

**Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses.** As required by the Government Code § 2006.002(c) and (f), Ms. Tomlin has determined that the proposed amendments will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person or crime laboratory. The revised rules provide a new expiration policy for forensic analysts and forensic technicians in the State of Texas so that licenses expire on the licensees' birthdates rather than two years from the date of their initial licensure.

**The Takings Impact Assessment.** Ms. Tomlin has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

**Government Growth Impact Statement.** Ms. Tomlin has determined that for the first five-year period, implementation of the proposed amendments will have no government growth impact. Pursuant to the analysis required by Government Code 2001.221(b): 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 increase or decrease future legislative appropriations to the agency; 4) the proposed rules requires payment of prorated licensing fees by current licensees adjusted to equal the amount a forensic analyst or technician would pay over a four-year period for renewal of their forensic analyst or forensic technician license under the current license renewal fees; 5) the proposed rules do not create a new regulation; 6) the proposed rules do not expand, limit, or repeal an existing regulation; 7) the proposed rules do not increase or decrease the number of individuals subject to the rule's applicability; and 8) the proposed rules have no effect on the state's economy.

**Environmental Rule Analysis.** The Commission has determined that the proposed rules are not brought with specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Commission asserts that the proposed rules are not a "major environmental rule," as defined in Government Code §2001.0225. As a result, the Commission asserts the preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

**Request for Public Comment.** The Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Tomlin 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by January 5, 2023, to be considered by the Commission.

Statutory Authority. The rules are proposed under the general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 §§ 3-a and its authority to license forensic analysts under 4-a(b).

Cross reference to statute. The proposal affects Tex. Code Crim. Proc. art. 38.01.

*§651.207. Forensic Analyst and Forensic Technician Licensing Requirements, Including Initial License Term[;] and Fee, Minimum Education and Coursework, General Forensic Examination, Proficiency Monitoring and Mandatory Legal and Professional Responsibility Training [and Procedure for Denial of Application and Reconsideration].*

(a) Issuance. The Commission may issue an individual's Forensic Analyst or Forensic Technician License under this section.

(b) Initial License Term. A Forensic Analyst or Forensic Technician license holder must renew the license holder's license on the last day of the license holder's birth month in the second year after issuance of the initial license.

(c) [(b)] Application. Before being issued a Forensic Analyst or Forensic Technician License, an applicant must [shall]:

(1) demonstrate that he or she meets the definition of Forensic Analyst or Forensic Technician set forth in this subchapter;

(2) complete and submit to the Commission a current Forensic Analyst or Forensic Technician License Application form;

(3) pay the required fee(s) as applicable:

(A) Initial Application fee of \$220 for Analysts and \$150 for Technicians [Screeners] for the twenty-four months of the Initial License Term. If the Analyst or Technician's Initial License Term under subsection (b) of this section exceeds twenty-four months, the Analyst or Technician shall pay an additional prorated amount of \$8.33 per month (for Analysts) and \$5.42 per month (for Technicians) for each month exceeding two years. If the Analyst or Technician's Initial License Term under subsection (b) of this section is less than twenty-four months, the Analyst or Technician shall pay a prorated amount of \$8.33 per month (for Analysts) and \$5.42 per month (for Technicians) for each month in the Initial License Term;

[(B) Biennial renewal fee of \$200 for Analyst and \$130 for Technicians/Screeners.]

(B) [(C)] Temporary License fee of \$100;

(C) [(D)] Provisional License fee of \$110 for Analysts and \$75 for Technicians[;] An applicant who is granted a provisional license and has paid the required fee will not be required to pay an additional initial application fee if the provisional status is removed within one year of the date the provisional license is granted;

(D) [(E)] License Reinstatement fee of \$220;

(E) [(F)] De Minimis License fee of \$200 per ten (10) licenses;

(F) [(G)] Uncommon Forensic Analysis License fee of \$200 per ten (10) licenses; and/or

(G) [(H)] Special Exam Fee of \$50 for General Forensic Analyst Licensing Exam, required only if testing beyond the three initial attempts or voluntarily taking the exam under the Unaccredited Discipline Exception described in subsection (g)(5)(C) of this section;

(4) provide accurate and current address and employment information to the Commission and update the Commission within five

(5) business days of any change in address or change of employment. Licensees are required to provide a home address, email address, and employer name and address on an application for a license; and

(5) provide documentation that he or she has satisfied all applicable requirements set forth under this section.

(d) [(e)] Minimum Education Requirements.

(1) Seized Drugs Analyst. An applicant for a Forensic Analyst License in seized drugs must have a baccalaureate or advanced degree in chemical, physical, biological science, chemical engineering or forensic science from an accredited university.

(2) Seized Drugs Technician. An applicant for a Forensic Analyst License limited to the seized drug technician category must have a minimum of an associate's degree or equivalent.

(3) Toxicology (Toxicology Analyst (Alcohol Only, Non-interpretive), Toxicology Analyst (General, Non-interpretive), Toxicologist (Interpretive)). An applicant for a Forensic Analyst License in toxicology must have a baccalaureate or advanced degree in a chemical, physical, biological science, chemical engineering or forensic science from an accredited university.

(4) Toxicology Technician. An applicant for a Forensic Analyst License limited to the toxicology technician category must have a minimum of an associate's degree or equivalent.

(5) Forensic Biology (DNA Analyst, Forensic Biology Screener, Nucleic Acids other than Human DNA Analyst, Forensic Biology Technician). An applicant for any category of forensic biology license must have a baccalaureate or advanced degree in a chemical, physical, biological science or forensic science from an accredited university.

(6) Firearm/Toolmark Analyst. An applicant for a Forensic Analyst License in firearm/toolmark analysis must have a baccalaureate or advanced degree in a chemical, physical, biological science, engineering or forensic science from an accredited university.

(7) Firearm/Toolmark Technician. An applicant for a Forensic Analyst License limited to firearm/toolmark technician must have a minimum of a high school diploma or equivalent degree.

(8) Materials (Trace) Analyst. An applicant for a Forensic Analyst License in materials (trace) must have a baccalaureate or advanced degree in a chemical, physical, biological science, chemical engineering or forensic science from an accredited university. A Materials (Trace) Analyst performing only impression evidence analyses must have a minimum of a high school diploma or equivalent degree.

(9) Materials (Trace) Technician. An applicant for a Forensic Analyst License limited to materials (trace) technician must have a minimum of a high school diploma or equivalent degree.

(10) Foreign/Non-U.S. degrees. The Commission shall recognize equivalent foreign, non-U.S. baccalaureate or advanced degrees. The Commission reserves the right to charge licensees a reasonable fee for credential evaluation services to assess how a particular foreign degree compares to a similar degree in the United States. The Commission may accept a previously obtained credential evaluation report from an applicant or licensee in fulfillment of the degree comparison assessment.

(11) If an applicant does not meet the minimum education qualifications outlined in this section, the procedure in subsection (f) or (j) of this section applies.

(e) [(d)] Specific Coursework Requirements.



(1) Seized Drugs Analyst. An applicant for a Forensic Analyst License in seized drugs must have a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university. In addition to the chemistry coursework, an applicant must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(2) Toxicology. An applicant for a Forensic Analyst License in toxicology must fulfill required courses as appropriate to the analyst's role and training program as described in the categories below:

(A) Toxicology Analyst (Alcohol Only, Non-interpretive). A toxicology analyst who conducts, directs or reviews the alcohol analysis of forensic toxicology samples, evaluates data, reaches conclusions and may sign a report for court or investigative purposes, but does not provide interpretive opinions regarding human performance must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university.

(B) Toxicology Analyst (General, Non-interpretive). A toxicology analyst who conducts, directs or reviews the analysis of forensic toxicology samples, evaluates data, reaches conclusions and may sign a report for court or investigative purposes, but does not provide interpretive opinions regarding human performance must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework that includes organic chemistry and two three-semester credit hour (or equivalent) college-level courses in analytical chemistry and/or interpretive science courses that may include Analytical Chemistry, Chemical Informatics, Instrumental Analysis, Mass Spectrometry, Quantitative Analysis, Separation Science, Spectroscopic Analysis, Biochemistry, Drug Metabolism, Forensic Toxicology, Medicinal Chemistry, Pharmacology, Physiology, or Toxicology.

(C) Toxicologist (Interpretive). A toxicologist who provides interpretive opinions regarding human performance related to the results of toxicological tests (alcohol and general) for court or investigative purposes must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework that includes organic chemistry, one three-semester credit hour (or equivalent) course in college-level analytical chemistry (Analytical Chemistry, Chemical Informatics, Instrumental Analysis, Mass Spectrometry, Quantitative Analysis, Separation Science or Spectroscopic Analysis) and one three-semester credit hour (or equivalent) college-level courses in interpretive science (Biochemistry, Drug Metabolism, Forensic Toxicology, Medicinal Chemistry, Pharmacology, Physiology, or Toxicology).

(D) An applicant for a toxicology license for any of the categories outlined in subparagraphs (A) - (C) of this paragraph must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(3) DNA Analyst. An applicant for a Forensic Analyst License in DNA analysis must demonstrate he/she has fulfilled the specific requirements of the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing effective September 1, 2011. An applicant must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(4) Firearm/Toolmark Analyst. An applicant must have a three-semester credit hour (or equivalent) college-level statistics course

from an accredited university or a program approved by the Commission. No other specific college-level coursework is required.

(5) Materials (Trace) Analyst. An applicant for a Forensic Analyst License in materials (trace) for one or more of the chemical analysis categories of analysis (chemical determination, physical/chemical comparison, gunshot residue analysis, and fire debris and explosives analysis) must have a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university. In addition to chemistry coursework for the chemical analysis categories, all materials (trace) license applicants must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. An applicant for a Forensic Analyst License in materials (trace) limited to impression evidence is not required to fulfill any specific college-level coursework requirements other than the statistics requirement.

(6) Exemptions from specific coursework requirements. The following categories of licenses are exempted from coursework requirements:

(A) An applicant for the technician license category of any forensic discipline set forth in this subchapter is not required to fulfill any specific college-level coursework requirements.

(B) An applicant for a Forensic Analyst License limited to forensic biology screening, nucleic acids other than human DNA and/or Forensic Biology Technician is not required to fulfill the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing or any other specific college-level coursework requirements.

(f) [(e)] Requirements Specific to Forensic Science Degree Programs. For a forensic science degree to meet the Minimum Education Requirements set forth in this section, the forensic science degree program must be either accredited by the Forensic Science Education Programs Accreditation Commission (FEPAC) or if not accredited by FEPAC, it must meet the minimum curriculum requirements pertaining to natural science core courses and specialized science courses set forth in the FEPAC Accreditation Standards.

(g) [(f)] Waiver of Specific Coursework Requirements and/or Minimum Education Requirements for Lateral Hires, Promoting Analysts and Current Employees. Specific coursework requirements and minimum education requirements are considered an integral part of the licensing process; all applicants are expected to meet the requirements of the forensic discipline(s) for which they are applying or to offer sufficient evidence of their qualifications as described below in the absence of specific coursework requirements or minimum education requirements. The Commission Director or Designee may waive one or more of the specific coursework requirements or minimum education requirements outlined in this section for an applicant who:

(1) has five or more years of credible experience in an accredited laboratory in the forensic discipline for which he or she seeks licensure; or

(2) is certified by one or more of the following nationally recognized certification bodies in the forensic discipline for which he or she seeks licensure;

- (A) The American Board of Forensic Toxicology;
- (B) The American Board of Clinical Chemistry;
- (C) The American Board of Criminalistics;
- (D) The International Association for Identification; or

(E) The Association of Firearm and Toolmark Examiners; and

(3) provides written documentation of laboratory-sponsored training in the subject matter areas addressed by the specific coursework requirements.

(4) An applicant must request a waiver of specific coursework requirements and/or minimum education requirements at the time the application is filed.

(5) An applicant requesting a waiver from specific coursework requirements and/or minimum education requirements shall file any additional information needed to substantiate the eligibility for the waiver with the application. The Commission Director or Designee shall review all elements of the application to evaluate waiver request(s) and shall grant a waiver(s) to qualified applicants.

(h) [(g)] General Forensic Analyst Licensing Exam Requirement.

(1) Exam Requirement. An applicant for a Forensic Analyst License must pass the General Forensic Analyst Licensing Exam administered by the Commission.

(A) An applicant is required to take and pass the General Forensic Analyst Licensing Exam one time.

(B) An applicant may take the General Forensic Analyst Licensing Exam no more than three times. If an applicant fails the General Forensic Analyst Licensing Exam or the Modified General Forensic Analyst Licensing Exam three times, the applicant has thirty (30) days from the date the applicant receives notice of the failure to request special dispensation from the Commission as described in subparagraph (C) of this paragraph. Where special dispensation is granted, the applicant has 90 days from the date he or she receives notice the request for exam is granted to successfully complete the exam requirement. However, for good cause shown, the Commission or its Designee at its discretion may waive this limitation.

(C) Requests for Exam. If an applicant fails the General Forensic Analyst Licensing Exam or Modified General Forensic Analyst Licensing Exam three times, the applicant must request in writing special dispensation from the Commission to take the exam more than three times. Applicants may submit a letter of support from their laboratory director or licensing representative and any other supporting documentation supplemental to the written request.

(D) If an applicant sits for the General Forensic Analyst Licensing Exam or the Modified General Forensic Analyst Licensing Exam more than three times, the applicant must pay a \$50 exam fee each additional time the applicant sits for the exam beyond the three initial attempts.

(E) Expiration of Provisional License if Special Dispensation Exam Unsuccessful. If the 90-day period during which special dispensation is granted expires before the applicant successfully completes the exam requirement, the applicant's provisional license expires.

(2) Modified General Forensic Analyst Licensing Exam. Technicians in any discipline set forth in this subchapter may fulfill the General Forensic Analyst Licensing Exam requirement by taking a modified exam administered by the Commission.

(3) Examination Requirements for Promoting Technicians. If a technician passes the modified General Forensic Analyst Licensing Exam and later seeks a full Forensic Analyst License, the applicant must complete the portions of the General Forensic Analyst Exam that were not tested on the modified exam.

(4) Credit for Pilot Exam. If an individual passes the Pilot General Forensic Analyst Licensing Exam, regardless of his or her eligibility status for a Forensic Analyst License at the time the exam is taken, the candidate has fulfilled the General Forensic Analyst Licensing Exam Requirement of this section should he or she later become subject to the licensing requirements and eligible for a Forensic Analyst License.

(5) Eligibility for General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam.

(A) Candidates for the General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam must be employees of a crime laboratory accredited under Texas law to be eligible to take the exam.

(B) Student Examinee Exception. A student is eligible for the General Forensic Analyst Licensing Exam one time if the student:

(i) is currently enrolled in an accredited university as defined in §651.202 of this subchapter (relating to Definitions);

(ii) has completed sufficient coursework to be within 24 semester hours of completing the requirements for graduation at the accredited university at which the student is enrolled; and

(iii) designates an official university representative who will proctor and administer the exam at the university for the student.

(C) Crime Laboratory Management and Unaccredited Forensic Discipline Exception. An Employee of a crime laboratory accredited under Texas law who is either part of the crime laboratory's administration or management team or authorized for independent case-work in a forensic discipline listed below is eligible for the General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam:

(i) forensic anthropology;

(ii) the location, identification, collection or preservation of physical evidence at a crime scene;

(iii) crime scene reconstruction;

(iv) latent print processing or examination;

(v) digital evidence (including computer forensics, audio, or imaging);

(vi) breath specimen testing under Transportation Code, Chapter 724, limited to analysts who perform breath alcohol calibrations; and

(vii) document examination, including document authentication, physical comparison, and product determination.

(i) [(h)] Proficiency Monitoring Requirement.

(1) An applicant must demonstrate participation in the employing laboratory's process for intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory's accrediting body's proficiency monitoring requirements as applicable to the Forensic Analyst or Forensic Technician's specific forensic discipline and job duties.

(2) A signed certification by the laboratory's authorized representative that the applicant has satisfied the applicable proficiency monitoring requirements, including any intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements of the laboratory's accrediting

body as of the date of the analyst's application, must be provided on the Proficiency Monitoring Certification form provided by the Commission. The licensee's authorized representative must designate the specific forensic discipline in which the Forensic Analyst or Forensic Technician actively performs forensic casework or is currently authorized to perform supervised or independent casework by the laboratory or employing entity.

~~[(t) License Term and Fee.]~~

~~[(1) A Forensic Analyst License shall expire two years from the date the applicant is granted a license.]~~

~~[(2) Application Fee. An applicant or licensee shall pay the following fee(s) as applicable:]~~

~~[(A) Initial Application fee of \$220 for Analysts and \$150 for Technicians/Screeners;]~~

~~[(B) Biennial renewal fee of \$200 for Analysts and \$130 for Technicians/Screeners;]~~

~~[(C) Provisional License fee of \$110 for Analysts and \$75 for Technicians/Screeners;]~~

~~[(D) License Reinstatement fee of \$220;]~~

~~[(E) De Minimis License fee of \$200 per ten (10) licenses; or]~~

~~[(F) Uncommon Forensic Analysis License fee of \$200 per ten (10) licenses.]~~

~~[(3) An applicant who is granted a provisional license and has paid the required fee will not be required to pay an additional initial application fee if the provisional status is removed within one year of the date the provisional license is granted.]~~

~~(j) Mandatory Legal and Professional Responsibility Course:~~

~~(1) All Forensic Analyst and Forensic Technician License applicants must complete the current Commission-sponsored mandatory legal and professional responsibility update at the time of their application or demonstrate that they have taken the training within the 12-month period preceding the date of their application.~~

~~(2) Mandatory legal and professional responsibility training topics may include training on current and past criminal forensic legal issues, professional responsibility and human factors, courtroom testimony, disclosure and discovery requirements under state and federal law, and other relevant topics as designated by the Commission.~~

~~[(j) Procedure for Denial of Application and Reconsideration.]~~

~~[(1) Application Review. The Commission Director or Designee must review each completed application and determine whether the applicant meets the qualifications and requirements set forth in this subchapter.]~~

~~[(2) Denial of Application. The Commission, through its Director or Designee, may deny an application if the applicant fails to meet any of the qualifications or requirements set forth in this subchapter.]~~

~~[(3) Notice of Denial. The Commission, through its Director or Designee, shall provide the applicant a written statement of the reason(s) for denial of the application.]~~

~~[(4) Request for Reconsideration. Within twenty (20) days of the date of the notice that the Commission has denied the application, the applicant may request that the Commission reconsider the denial. The request must be in writing, identify each point or matter about~~

~~which reconsideration is requested, and set forth the grounds for the request for reconsideration.]~~

~~[(5) Reconsideration Procedure. The Commission must consider a request for reconsideration at its next meeting where the applicant may appear and present testimony.]~~

~~[(6) Commission Action on Request. After reconsidering its decision, the Commission may either affirm or reverse its original decision.]~~

~~[(7) Final Decision. The Commission, through its Director or Designee, must notify the applicant in writing of its decision on reconsideration within fifteen (15) business days of the date of its meeting where the final decision was rendered.]~~

~~§651.208. Forensic Analyst and Forensic Technician License Renewal.~~

~~(a) Timing of Application for Renewal. The Commission may renew an individual's Forensic Analyst or Forensic Technician License up to 60 days before the expiration of the individual's license term.~~

~~(b) Renewal Term. The renewal date of a Forensic Analyst or Forensic Technician License will be every two years on the last day of the license holder's birth month [expires two years from the date the initial application was granted].~~

~~(c) Renewal Fees. The biennial renewal fee is \$200 for Forensic Analysts and \$130 for Forensic Technicians. Fees for Forensic Analysts and Forensic Technicians seeking to renew their licenses between January 1, 2024 and December 31, 2025, will be pro-rated on a monthly basis depending upon the birth month of the renewing license holder and the number of months in the renewal term as describe in subsection (b) of this section. The pro-rated fee will be assessed at \$8.33 per month (for Forensic Analysts) and \$5.42 per month (for Forensic Technicians).~~

~~[(e) Effective date. A renewed Forensic Analyst or Forensic Technician License takes effect on the date the licensee's previous license expires.]~~

~~(d) Application. An applicant for a Forensic Analyst or Forensic Technician License renewal shall complete and submit to the Commission a current Forensic Analyst or Forensic Technician License Renewal Application provided by the Commission, pay the required fee, attach documentation of fulfillment of Continuing Forensic Education and other requirements set forth in this section.~~

~~(e) Proficiency Monitoring Certification Form for Renewal Applicants Employed by an Accredited Laboratory. An applicant for a Forensic Analyst or Forensic Technician License renewal must provide an updated copy of the Commission's Proficiency Monitoring Certification form demonstrating the applicant participates in the laboratory's process for intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory's accrediting body's requirements as applicable to the Forensic Analyst or Forensic Technician's specific forensic discipline and job duties. The form must be:~~

~~(1) signed by the licensee's authorized laboratory representative; and~~

~~(2) designate the specific forensic discipline in which the Forensic Analyst or Forensic Technician actively performs forensic casework or is currently authorized or currently participating in a training program to become authorized to perform supervised or independent forensic casework.~~

(f) Proficiency Monitoring Certification Form for Renewal Applicants Not Employed at an Accredited Laboratory or at an Accredited Laboratory in a Forensic Discipline Not Covered by the Scope of the Laboratory's Accreditation.

(1) An applicant for a Forensic Analyst or Forensic Technician license renewal who is employed by an entity other than an accredited laboratory or performs a forensic examination or test at an accredited laboratory in a forensic discipline not covered by the scope of the laboratory's accreditation must provide:

(A) an updated copy of the Commission's Proficiency Monitoring Certification form demonstrating the applicant participates in the laboratory or employing entity's process for intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory or employing entity's Commission-approved process for proficiency monitoring as applicable to the Forensic Analyst or Forensic Technician's specific forensic discipline and job duties:

(i) signed by the licensee's authorized laboratory representative; and

(ii) designating the specific forensic discipline in which the Forensic Analyst or Forensic Technician actively performs forensic casework or is currently authorized to perform supervised or independent forensic casework;

(B) written proof of the Forensic Science Commission's approval of the laboratory or employing entity's proficiency monitoring activities or exercise(s) as applicable to the applicant's specific forensic discipline and job duties; and

(C) written documentation of performance in conformance with expected consensus results in compliance with and on the timeline set forth by the laboratory or employing entity's Commission-approved proficiency monitoring activities or exercise(s) as applicable to the applicant's specific forensic discipline and job duties.

(g) Continuing Forensic Education Including Mandatory Legal and Professional Responsibility [Update]:

(1) Forensic Analyst and Forensic Technician Licensees must complete a Commission-sponsored mandatory legal and professional responsibility update by the expiration of each two-year license cycle as provided by the Commission. Forensic Technicians are not required to complete any other continuing forensic education requirements listed in this section.

(2) Mandatory legal and professional responsibility training topics may include training on current and past criminal forensic legal issues, professional responsibility and human factors, courtroom testimony, disclosure and discovery requirements under state and federal law, and other relevant topics as designated by the Commission.

(3) All forensic analysts shall be required to satisfy the following Continuing Forensic Education Requirements by the expiration of each two-year license cycle:

(A) Completion of thirty-two (32) continuing forensic education hours per 2-year license cycle.

(B) Sixteen (16) hours of the thirty-two (32) must be discipline-specific training, peer-reviewed journal articles, and/or conference education hours. If a licensee is licensed in multiple forensic disciplines, at least eight (8) hours of discipline-specific training in each forensic discipline are required, subject to the provisions set forth in subsection (f) of this section.

(C) The remaining sixteen (16) hours may be general forensic training, peer-reviewed journal articles, and/or conference education hours that include hours credited for the mandatory legal and professional responsibility training.

(4) Continuing forensic education programs will be offered and/or designated by the Commission and will consist of independent, online trainings, readings, and participation in recognized state, regional, and national forensic conferences and workshops.

(5) Approved continuing forensic education hours are applied for credit on the date the program and/or training is delivered.

(h) Timeline for Exemption from Supplemental Continuing Forensic Education Requirements. Where a current licensee adds a forensic discipline to the scope of his or her license, the following continuing forensic education requirements apply for the supplemental forensic discipline:

(1) If the supplemental forensic discipline is added less than six (6) months prior to the expiration of the analyst's current license, no additional discipline-specific training is required for the supplemental forensic discipline.

(2) If the supplemental forensic discipline is added six (6) months or more but less than eighteen (18) months prior to the expiration of the analyst's current license, four (4) additional discipline-specific training hours are required for the supplemental forensic discipline.

(3) If the supplemental forensic discipline is added eighteen (18) months or more prior to the expiration of the analyst's current license, eight (8) additional discipline-specific training hours are required for the supplemental forensic discipline.

(i) If an applicant fails to fulfill any or all of the requirements pertaining to license renewal, continuing forensic education and the mandatory legal and professional responsibility update, the applicant may apply to the Commission for special dispensation on a form to be provided on the Commission's website. Upon approval by the Commission, the applicant may be allowed an extension of time to fulfill remaining continuing forensic education requirements.

(j) Temporary Exception to Continuing Forensic Education Requirements During January 2024 to December 2026 Transition from Application to Birthdate-Based Renewal Terms. For any licensee who has less than two years to complete the continuing forensic education requirements in (g) of this section as a result of the transition from application-based renewal to birthdate-based renewal, the number of required continuing education hours in (g)(3)(A) (B) for license renewal shall be pro-rated based on the number of months in the renewal term.

(k) Subsections (j) and (k) of this section expire on December 31, 2026.

§651.209. Forensic Analyst and Forensic Technician License Expiration, [and] Reinstatement, and Procedure for Denial of Initial Application and Reconsideration.

(a) Forensic Analyst and Forensic Technician License Expiration.

(1) When a Forensic Analyst or a Forensic Technician fails to renew his or her license on or before the last day of the license term, the license is considered inactive. The inactive status shall begin on the day immediately following the last day of the license term.

(2) A license that is deemed inactive based on failure to renew may be reinstated within the ninety (90) day period following the last day of the license term. When a Forensic Analyst or Technician

fails to renew by the 90th day after the last day of the license term, the license status shall change from inactive to expired.

(b) Notice of License Status Based on Failure to Renew. Within fifteen (15) days of the last day of the license term when the license has not been renewed, the Commission shall notify the licensee in writing of the change in license status to inactive. If the inactive license is not renewed within ninety (90) days of the last day of the license term and is therefore deemed expired, the Commission shall notify the licensee in writing of the change in license status from inactive to expired. Notice is not required where the Commission obtains confirmation in writing from the Forensic Analyst or Technician that he or she does not intend to renew his or her license.

(c) The Commission may reinstate an inactive or expired Forensic Analyst or Technician License upon fulfillment of the following requirements by the licensee:

- (1) payment of a \$220 license reinstatement fee;
- (2) updating of current continuing forensic education requirements status with the Commission; and
- (3) completion of a form demonstrating that except for making proper application, the Forensic Analyst or Technician was eligible for licensure by the Commission during the period the license was inactive due to failure to renew.

(d) Additional Requirements for Expired Licenses. Once a license has expired, the following requirements must be fulfilled before the license is reinstated:

- (1) Successful completion of the General Forensic Analyst Licensing Exam Requirement as described in §651.207(g) of this subchapter (relating to Forensic Analyst Licensing Requirements Including License Term, Fee and Procedure for Denial of Application and Reconsideration).
- (2) Fulfillment of current specific coursework requirements applicable to the forensic discipline as described in §651.207(d) of this subchapter.

(e) Exception for Licensees Who Change Roles or Experience a Gap in Employment by an Accredited Laboratory. A licensee who changes roles to a position that does not require a license or who experiences a gap in employment at an accredited laboratory for reasons other than professional misconduct, may notify the Commission by submitting a Declaration of Inactivity form; a licensee whose license is inactive due to a role change or gap in employment shall not be subject to the reinstatement requirements of this section should the licensee seek to reestablish licensure in the future.

(f) Specific Coursework and Minimum Education Requirements to Reinstate an Inactive License. A Forensic Analyst or Technician reinstating an inactive license under this section is subject to specific coursework and minimum education requirements in place at the time the Commission initially granted his or her license.

(1) Application Review. The Commission Director or Designee must review each completed application and determine whether the applicant meets the qualifications and requirements set forth in this subchapter.

(2) Denial of Application. The Commission, through its Director or Designee, may deny an application if the applicant fails to meet any of the qualifications or requirements set forth in this subchapter.

(3) Notice of Denial. The Commission, through its Director or Designee, shall provide the applicant a written statement of the reason(s) for denial of the application.

(4) Request for Reconsideration. Within twenty (20) days of the date of the notice that the Commission has denied the application, the applicant may request that the Commission reconsider the denial. The request must be in writing, identify each point or matter about which reconsideration is requested, and set forth the grounds for the request for reconsideration.

(5) Reconsideration Procedure. The Commission must consider a request for reconsideration at its next meeting where the applicant may appear and present testimony.

(6) Commission Action on Request. After reconsidering its decision, the Commission may either affirm or reverse its original decision.

(7) Final Decision. The Commission, through its Director or Designee, must notify the applicant in writing of its decision on reconsideration within fifteen (15) business days of the date of its meeting where the final decision was rendered.

(g) Procedure for Denial of Application and Reconsideration.

(1) Application Review. The Commission Director or Designee must review each completed application and determine whether the applicant meets the qualifications and requirements set forth in this subchapter.

(2) Denial of Application. The Commission, through its Director or Designee, may deny an application if the applicant fails to meet any of the qualifications or requirements set forth in this subchapter.

(3) Notice of Denial. The Commission, through its Director or Designee, shall provide the applicant a written statement of the reason(s) for denial of the application.

(4) Request for Reconsideration. The applicant may request that the Commission reconsider the denial on or before the 20th day after the applicant receives notice from the Commission. The request must be in writing, identify each point or matter about which reconsideration is requested, and set forth the grounds for the request for reconsideration.

(5) Reconsideration Procedure. The Commission must consider a written request for reconsideration where the applicant may appear and present testimony at its next meeting following the request if the request is received at least 15 business days prior to the Commission's next scheduled quarterly meeting. Otherwise, the Commission must consider a written request for reconsideration at its second quarterly meeting following the request.

(6) Commission Action on Request. After reconsidering its decision, the Commission may either affirm or reverse its original decision.

(7) Final Decision. The Commission, through its Director or Designee, must notify the applicant in writing of its decision on reconsideration on or before the fifteenth day after the meeting in which the Commission rendered its final decision.

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

Filed with the Office of the Secretary of State on November 13, 2023.

TRD-202304219



## SUBCHAPTER F. DNA QA DATABASE; STORAGE AND REMOVAL OF CERTAIN DNA RECORDS

### 37 TAC §§651.501 - 651.503

The Texas Forensic Science Commission (Commission) proposes new Subchapter F DNA QA Database; Storage and Removal of Certain DNA Records to 37 Texas Administrative Code Chapter 651. The amendments are responsive to the 88th Texas Legislature's passage of HB 3506, which requires the Commission to adopt prescribed rules for the removal of elimination sample DNA records from a crime laboratory's deoxyribonucleic acid (DNA) Quality Assurance (QA) database, a database maintained by a crime laboratory and used to identify possible contamination or other quality assurance events with respect to a DNA sample.

**Background and Justification.** Under the new rules, the Commission, in accordance with HB 3506: (1) requires all crime laboratories that maintain a DNA QA database to maintain the database separately from any other local, state, or federal database, including the CODIS DNA database established by the Federal Bureau of Investigation; (2) prohibits crime laboratories from uploading or storing a DNA record created from an elimination sample, or any other information derived from that record, in any database other than the DNA QA database maintained by the crime laboratory; and (3) requires each crime laboratory that maintains a DNA QA database to, not later than three months after the date on which a forensic DNA analysis of an elimination sample is completed, remove from the DNA QA database the DNA record created from the elimination sample and any other information derived from that record that is contained in the database. The new rules are necessary to reflect the proposals made by the Commission at its October 20, 2023, quarterly meeting at which the Commission voted to propose new rules responsive to the 88th Texas Legislature's passage of HB 3506.

**Fiscal Note.** Leigh M. Tomlin, Associate General Counsel of the Commission, has determined that for each year of the first five years the new rule is in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There is no anticipated effect on local employment or the local economy as a result of the proposal. There is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the proposed new rule.

**One-for-One Rule Requirement for Rules with a Fiscal Impact.** Because Ms. Tomlin has determined that the rules do not have a fiscal impact that imposes a cost on a regulated person, including another state agency, a special district, or a local government, the agency is not required to take further action under Government Code § 2001.0045.

**Rural Impact Statement.** The Commission expects no adverse economic effect on rural communities as the new rule does not

impose any direct costs or fees on municipalities in rural communities.

**Public Benefit/Cost Note.** Ms. Tomlin has also determined that for each year of the first five years the new rule is in effect, the anticipated public benefit is a clearer and more efficient timeline and rules for crime laboratories maintaining and storing sensitive genetic information related to elimination samples, which are blood samples or other biological samples or specimens voluntarily provided victims of an offense or another individual not involved in the alleged offense whose DNA is likely to be present at the scene of the crime often used by investigators or analysts to isolate and identify the DNA of a potential perpetrator.

**Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses.** As required by the Government Code § 2006.002(c) and (f), Ms. Tomlin has determined that the proposed amendments will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person or crime laboratory.

**Government Growth Impact Statement.** Ms. Tomlin has determined that for the first five-year period, implementation of the proposed new rules will have no government growth impact. Pursuant to the analysis required by Government Code 2001.0221(b): (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 increase or decrease future legislative appropriations to the agency; (4) the proposed rule does not require any change in fees; (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; and (8) the proposed rule has no effect on the state's economy.

**Probable Economic Costs to Persons Required to Comply with Proposal.** Ms. Tomlin has determined for the first five-year period that the rules are in effect, there is no anticipated economic cost to persons who are required to comply with the proposed rules.

**The Takings Impact Assessment.** Ms. Tomlin has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

**Environmental Rule Analysis.** Ms. Tomlin has determined that the proposed rules are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Commission asserts that this proposed rule is not a "major environmental rule," and defined by Government Code § 2001.0225. As a result, the Commission asserts that the preparation of an environmental impact analysis, as provided by Government Code §2001.0225, is not required.

**Request for Public Comment.** The Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Tomlin 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by January 5, 2023, to be considered by the Commission.

Statutory Authority. The new rule is proposed under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to regulate crime laboratories under Article 38.01 § 3-b(a). It also conforms to changes made by HB 3506. This proposal has been reviewed by legal counsel and found to be within the state agency's authority to adopt.

Cross-reference to statute. The proposal affects Tex. Code Crim. Proc. art. 38.01. No other codes, articles, or statutes are affected by this proposal.

§651.501. Purpose.

Generally. This subchapter contains the Texas Forensic Science Commission (Commission) rules adopted under Code of Criminal Procedure, Article 38.01 § 4-e that govern the storage and removal of certain DNA records maintained in a crime laboratory's DNA QA database.

§651.502. Definitions.

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

(1) DNA--deoxyribonucleic acid.

(2) DNA QA Database--a database maintained by a crime laboratory and used to identify possible contamination or other quality assurance events with respect to a DNA sample.

(3) Elimination sample--a blood sample or other biological sample or specimen voluntarily provided by the victim of an offense or another individual not involved in the alleged offense whose DNA is likely to be present at the scene of the crime to isolate and identify the DNA of a potential perpetrator.

(A) The designation of any sample as an "elimination sample" is based upon factual information provided by the submitting law enforcement or other investigative agency.

(B) Samples maintained by a crime laboratory for the purpose of administering a blind proficiency testing program are not considered elimination samples subject to this subchapter.

(4) QA--quality assurance system in a crime laboratory.

§651.503. DNA QA Database; Storage and Removal of Certain DNA Records.

(a) Requirement to Maintain DNA QA Database Separately. A crime laboratory's DNA QA database must be maintained separately from any other local, state, or federal database, including the CODIS DNA database established by the Federal Bureau of Investigation.

(b) Prohibited Upload of Elimination Samples. Crime laboratories are prohibited from uploading or storing a DNA record created from an elimination sample, or any other information derived from that record, in any database other than the DNA QA database maintained by the crime laboratory. Nothing in this subchapter prohibits a crime laboratory from maintaining case information, including DNA records, as required to comply with accrediting body standards or applicable law, including but not limited to article 39.14, Code of Criminal Procedure.

(c) Prohibited Access to DNA QA Database Records. Crime laboratories are prohibited from allowing any other person, other than authorized users, access to the crime laboratory's DNA QA database.

(d) Timeline for Removal of Elimination Samples. Crime laboratories that maintain a DNA QA database must, not later than three months after the date on which a forensic DNA analysis of an elimination sample is completed, remove from the DNA QA database the DNA record created from the elimination sample and any other information derived from that record that is contained in the database.

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

Filed with the Office of the Secretary of State on November 16, 2023.

TRD-202304296

Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

Earliest possible date of adoption: December 31, 2023

For further information, please call: (512) 784-0037



## TITLE 43. TRANSPORTATION

### PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

#### CHAPTER 4. EMPLOYMENT PRACTICES

##### SUBCHAPTER B. JOB APPLICATION PROCEDURES

###### 43 TAC §4.10, §4.15

The Texas Department of Transportation (department) proposes the amendments to §4.10 and §4.15, concerning to Job Application Procedures.

###### EXPLANATION OF PROPOSED AMENDMENTS

The purpose of the amendments is to align the rules with changes made by Senate Bill No. 1376, Acts of the 88th Legislature, Regular Session, 2023, relating to employment preferences for members of the military and their spouses. S.B. 1376 amended Government Code, Chapter 657, by expanding the state's employment preference for veterans to the spouse of a member of the United States armed forces or Texas National Guard serving on active duty as well as the spouse of a veteran if the spouse is the primary source of income for the household and the veteran has a total disability rating based either on having a service-connected disability with a disability rating of at least 70 percent or on individual unemployability. The bill grants the spouse priority in the order of preference after a veteran, with or without a disability, but before a qualifying surviving spouse or qualifying orphan of a veteran. The bill also replaces references to veteran's employment preference with references to a military employment preference and includes military members and their dependents.

Amendment to §4.10, Purpose, replaces the reference to employment preference for veterans with employment preference for military related service to align with the new terminology that was added by Senate Bill 1376, Acts of the 87th Legislature, Regular Session, 2023.

Amendment to §4.15, Preferences, updates the heading of Government Code, Chapter 657.

###### FISCAL NOTE

Stephen Stewart, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments

as a result of the department's or commission's enforcing or administering the proposed rules.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

David McMillan, Director, Human Resources Division, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

#### PUBLIC BENEFIT

David McMillan has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be realized efficiencies in the department's employment practices.

#### COSTS ON REGULATED PERSONS

David McMillan has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

#### ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

#### GOVERNMENT GROWTH IMPACT STATEMENT

David McMillan has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rules will have no effect on government growth. He expects that during the first five years that the rule would be in effect:

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

#### TAKINGS IMPACT ASSESSMENT

David McMillan has determined that a written takings impact assessment is not required under Government Code, §2007.043.

#### SUBMITTAL OF COMMENTS

Written comments on the amendments to §§4.10 and 4.15, may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Employment Practices." The deadline for receipt of comments is 5:00 p.m. on January 1, 2024. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

#### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

#### CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Government Code, Chapter 657.

##### *§4.10. Purpose.*

It is the policy and practice of the Texas Transportation Commission and the Texas Department of Transportation to ensure and promote internal and external equal employment opportunity and to use affirmative action to achieve these ends. In keeping with this policy and with the requirements of Transportation Code, §§201.401-201.404 and Government Code, Chapters 656, 657, and 672, this subchapter prescribes the procedures for notifying potential applicants of vacant positions within the department, making applications for employment, and obtaining employment preferences related to military service and for [veterans or] former foster children.

##### *§4.15. Preferences.*

The department will give an applicant employment preference over other applicants who do not have greater qualifications for the same position, if the applicant:

(1) qualifies for employment preference under Government Code, Chapter 657, Military [Veteran's] Employment Preferences; or

(2) is entitled to an employment preference under Government Code, Chapter 672, Employment Preference For Former Foster Children.

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

Filed with the Office of the Secretary of State on November 16, 2023.

TRD-202304302

Leonard Reese

Senior General Counsel

Texas Department of Transportation

Earliest possible date of adoption: December 31, 2023

For further information, please call: (512) 486-5081





# 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 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 127. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER DEVELOPMENT AND CAREER AND TECHNICAL EDUCATION

##### SUBCHAPTER B. HIGH SCHOOL

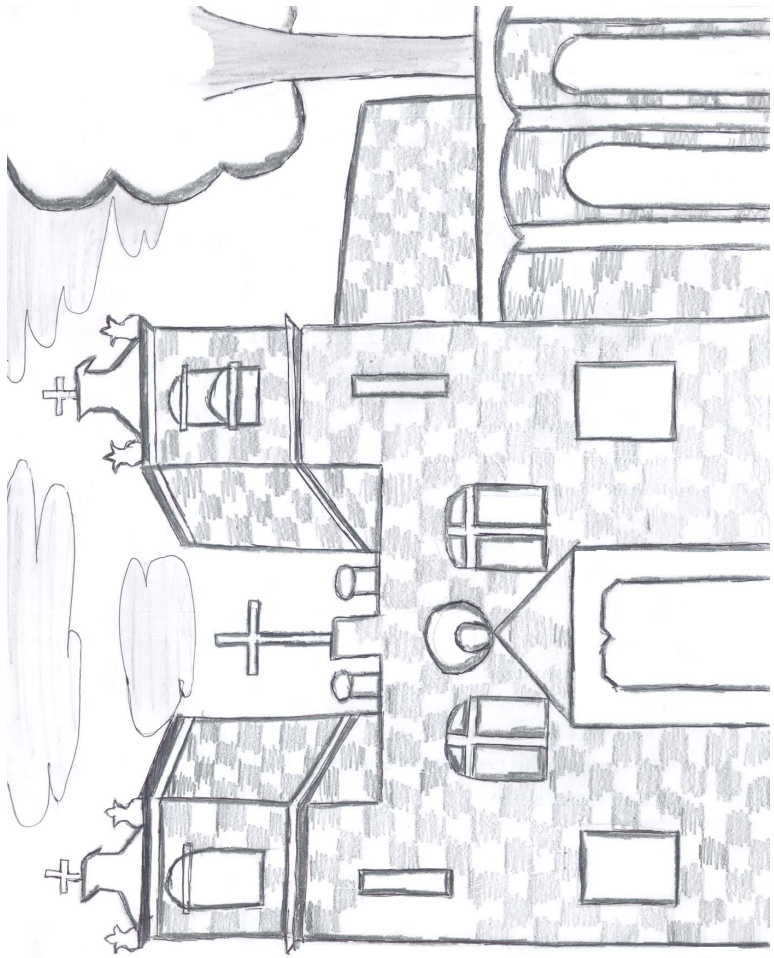
###### 19 TAC §127.18

Proposed new §127.18, published in the May 12, 2023, issue of the *Texas Register* (48 TexReg 2466), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on November 14, 2023.

TRD-202304231





# ADOPTED RULES

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

## TITLE 1. ADMINISTRATION

### PART 4. OFFICE OF THE SECRETARY OF STATE

#### CHAPTER 106. REGISTRATION OF DATA BROKERS

The Office of the Secretary of State (Office) adopts new Chapter 106, §§106.1 - 106.5, concerning registration of data brokers. The Office adopts these rules to implement the new registration requirements for data brokers in Senate Bill 2105, enacted by the 88th Legislature, Regular Session, codified at Chapter 509 of the Texas Business and Commerce Code (SB 2105).

Section 106.1 is adopted without changes to the proposed text as published in the September 29, 2023, issue of the *Texas Register* (48 TexReg 5593). This rule will not be republished.

Sections 106.2, 106.3, 106.4, and 106.5 are adopted with changes to the proposed text as published in the September 29, 2023, issue of the *Texas Register* (48 TexReg 5593). These rules will be republished. The changes to §106.2 and §106.4 are similar in nature and primarily simplify the execution requirements for documents submitted under those respective sections. The change to §106.3 updates a defined term and is nonsubstantive. The changes to §106.5 alter the text of the associated figures in response to public comments received, as described below.

#### BACKGROUND INFORMATION AND JUSTIFICATION

The adoption implements SB 2105 (88th Legislature, Regular Session), which creates a comprehensive framework in Chapter 509 of the Texas Business and Commerce Code to regulate data brokers. The bill took effect on September 1, 2023.

As enacted by SB 2105, Chapter 509 of the Texas Business and Commerce Code requires a data broker (as defined in Texas Business and Commerce Code §509.001(4)) to register annually with the Office. Texas Business and Commerce Code §509.005 specifies the amount of the registration or renewal fee and identifies the information that must be included in a data broker's registration statement filed with the Office. Texas Business and Commerce Code §509.006 directs the Secretary of State to establish and maintain, on its Internet website, a searchable, central registry of data brokers registered under §509.005. Texas Business and Commerce Code §509.004 requires a data broker that maintains an Internet website or mobile application to post a conspicuous notice on the website or application that, in part, contains the language provided by rule of the Office for inclusion in the notice.

Section 2 of SB 2105 requires the Office, not later than December 1, 2023, to adopt rules necessary to facilitate registration

by a data broker under Texas Business and Commerce Code §509.005. Section 2 also directs the Office to incorporate into the rules adequate time for a data broker to comply with Chapter 509 of the Texas Business and Commerce Code following the adoption of the rules.

The purpose of these new rules under Chapter 106 (Registration of Data Brokers) is to provide information regarding the procedures for data broker registration with the Office and the posting of a notice on the data broker's Internet website or mobile application, in accordance with SB 2105.

#### COMMENTS

The 30-day comment period ended on October 29, 2023. During this period, the Office received comments regarding the proposed rules from the Association of National Advertisers, the Coalition for Sensible Public Records Access, the Texas Council on Family Violence, and Texas Appleseed. A summary of the comments relating to the proposed rules and the Office's responses follows.

**Comment:** Two commenters suggested revising proposed §106.2(b)(1) to require contact information for the data broker, rather than for the individual submitting the registration statement or renewal application. The commenters maintained that requiring contact information for an individual submitter would obligate a data broker to submit a statement of correction under proposed §106.4 each time that information changed, such as the individual submitter's death or departure from employment by the data broker.

**Response:** The Office declines to revise §106.2(b)(1) as suggested. Texas Business and Commerce Code §509.005(b) already requires contact information for the data broker and such information for the individual submitter is necessary for administrative purposes. The Office also notes that a statement of correction is neither required nor appropriate under these rules if information was accurate at the time of registration or renewal, as applicable, but changed at a later date. Instead, a registered data broker would provide the desired contact information in its renewal application. The Office did not make changes in response to these comments.

**Comment:** Two commenters recommended revising proposed §106.2(b) to include either a requirement or request for a data broker to provide information related to its general opt-out policies, in addition to similar information otherwise required under Texas Business and Commerce Code §509.005(b)(5)(A).

**Response:** The Office declines to include the suggested revision because Texas Business and Commerce Code §509.005(c) already permits a data broker to provide such additional information in the registration statement or renewal application, as applicable. The Office did not make changes in response to these comments.

Comment: One commenter requested adding an amendment filing to address updates to information that was otherwise correct at the time of registration or renewal. Two commenters appeared to be under the impression that a statement of correction filed under proposed §106.4 could function to update information on an interim basis.

Response: The Office reiterates that a statement of correction is not appropriate under these rules if information was accurate at the time of registration or renewal, as applicable, but changed at a later date. Instead, a registered data broker would provide the desired contact information in its renewal application. The Office did not make changes in response to this comment.

Comment: Three commenters suggested revising proposed §106.5(1) and §106.5(2) to improve the clarity and accessibility of the notice language required by Texas Business and Commerce Code §509.004.

Response: The Office agrees with the comments. The required notice language in §106.5(1) and §106.5(2) has been revised accordingly.

Comment: Two commenters suggested revising proposed §106.5, concerning the notice requirements, so that a data broker's obligation to post the required notice is contingent upon the filing of its initial registration statement, rather than the effective date of the rules. One commenter appeared to be under the impression that the Office would be in a position to determine that a particular data broker is not required to register under Chapter 509 of the Texas Business and Commerce Code.

Response: The Office disagrees that a data broker's compliance with the notice requirement is or can be conditioned on filing its initial registration statement. Texas Business and Commerce Code §§509.004 and 509.005 relate to the notice and registration requirements, respectively. There is no indication in those sections or elsewhere in Chapter 509 of the Texas Business and Commerce Code that either requirement is dependent on or triggered by the other. Importantly, proposed §106.5 simply provides the required notice language pursuant to Texas Business and Commerce Code §509.004. The Office anticipates that relevant information about data brokers and the data broker registration process will be available on the Office's website prior to or on December 1, 2023, and this will be sufficient to address any potential confusion by the public. The Office also notes that the Office cannot determine whether a particular data broker is subject to Chapter 509 of the Texas Business and Commerce Code or is required to file either an initial registration statement or renewal application. The Office did not make changes in response to these comments.

Comment: One commenter requested an additional rule relating to the location in which the required notice would be published on the data broker's website or mobile application.

Response: The Office declines to add a rule relating to the placement of the required notice, as that decision should be at the discretion of each data broker. The Office did not make changes in response to this comment.

Comment: Two commenters offered recommendations relating to features of the central registry of registered data brokers that will be maintained on the Office's website pursuant to Texas Business and Commerce Code §509.006. The commenters suggested that the Office allow the public to access a complete list of registrants and their full registration statements on the

registry. The commenters also asked the Office to prioritize the accessibility and usability of the registry.

Response: The Office acknowledges and appreciates these comments. Although the data broker registry is outside the scope of the proposed rules, the Office's development of the registry is ongoing and will include some of the suggested considerations and other features that are intended to make the registry functional and accessible to the public. The Office did not make changes in response to these comments.

## SUBCHAPTER A. DEFINITIONS

### 1 TAC §106.1

#### STATUTORY AUTHORITY

The new rules are adopted as authorized by Texas Business and Commerce Code §509.010 and Texas Government Code §2001.004(1). Texas Business and Commerce Code §509.010 authorizes the Office to adopt rules as necessary to implement Chapter 509 of the Texas Business and Commerce Code. Texas Government Code §2001.004 requires a state agency to adopt rules of practice stating the nature and requirements of formal and informal procedures.

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

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

TRD-202304263

Adam Bitter

General Counsel

Office of the Secretary of State

Effective date: December 4, 2023

Proposal publication date: September 29, 2023

For further information, please call: (512) 463-5770



## SUBCHAPTER B. REGISTRATION AND RENEWAL OF DATA BROKERS

### 1 TAC §106.2, §106.3

#### STATUTORY AUTHORITY

The new rules are adopted as authorized by Texas Business and Commerce Code §509.010 and Texas Government Code §2001.004(1). Texas Business and Commerce Code §509.010 authorizes the Office to adopt rules as necessary to implement Chapter 509 of the Texas Business and Commerce Code. Texas Government Code §2001.004 requires a state agency to adopt rules of practice stating the nature and requirements of formal and informal procedures.

*§106.2. Registration and Renewal of Data Brokers.*

(a) A complete initial registration statement or renewal application is comprised of:

(1) A completed registration statement or renewal application that is signed by a person authorized to act by or on behalf of the data broker, in the form promulgated by the secretary (See Form 4001); and

(2) Payment of the registration fee or renewal fee stated in Business and Commerce Code §509.005(a) or §509.005(d), as applicable.

(b) A registration statement or renewal application must comply with Business and Commerce Code §509.005, and also provide:

(1) For the individual submitting the registration statement or renewal application:

- (A) The individual's legal name;
- (B) The individual's telephone number;
- (C) The individual's primary physical address;
- (D) The individual's mailing address; and
- (E) The individual's e-mail address.

(2) For all renewals, the renewal application must also:

(A) Specify that the submission is a renewal application related to an existing registration certificate; and

(B) Provide the registration number assigned to the data broker by the secretary.

### §106.3. *Timing of Registration.*

(a) A registration certificate expires on the first anniversary of its date of issuance by the secretary.

(b) A data broker seeking to renew an existing registration certificate shall file a renewal application within ninety (90) days before the expiration of the registration certificate.

(c) The initial registration of a data broker to which Chapter 509 of the Business and Commerce Code applies must be filed on or before March 1, 2024.

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

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

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Adam Bitter

General Counsel

Office of the Secretary of State

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Proposal publication date: September 29, 2023

For further information, please call: (512) 463-5770



## SUBCHAPTER C. STATEMENT OF CORRECTION

### 1 TAC §106.4

#### STATUTORY AUTHORITY

The new rule is adopted as authorized by Texas Business and Commerce Code §509.010 and Texas Government Code §2001.004(1). Texas Business and Commerce Code §509.010 authorizes the Office to adopt rules as necessary to implement Chapter 509 of the Texas Business and Commerce Code. Texas Government Code §2001.004 requires a state agency to adopt rules of practice stating the nature and requirements of formal and informal procedures.

### §106.4. *Corrections.*

(a) A data broker must submit a statement of correction if, during the year, it becomes known to the registrant that any information given at the time of registration or renewal, as applicable, was inaccurate.

(b) A statement of correction must include the following information:

- (1) The legal name of the data broker;
- (2) The date of the last filed registration statement or renewal application;
- (3) The registration number assigned to the data broker by the secretary; and
- (4) A statement that identifies the inaccuracy and provides the corrected information.

(c) The statement of correction must be signed by a person authorized to act by or on behalf of the data broker in the same manner as a registration statement or renewal application.

(d) There is no filing fee for a correction.

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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Adam Bitter

General Counsel

Office of the Secretary of State

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For further information, please call: (512) 463-5770



## SUBCHAPTER D. NOTICE REQUIREMENTS

### 1 TAC §106.5

#### STATUTORY AUTHORITY

The new rule is adopted as authorized by Texas Business and Commerce Code §509.010 and Texas Government Code §2001.004(1). Texas Business and Commerce Code §509.010 authorizes the Office to adopt rules as necessary to implement Chapter 509 of the Texas Business and Commerce Code. Texas Government Code §2001.004 requires a state agency to adopt rules of practice stating the nature and requirements of formal and informal procedures.

### §106.5. *Notice Requirements.*

A data broker that maintains an Internet website or mobile application shall post a conspicuous notice on the website or mobile application that states:

- (1) For websites:  
Figure: 1 TAC §106.5(1)
- (2) For mobile applications:  
Figure: 1 TAC §106.5(2)

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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Adam Bitter

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Office of the Secretary of State

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For further information, please call: (512) 463-5770



## TITLE 16. ECONOMIC REGULATION

### PART 1. RAILROAD COMMISSION OF TEXAS

#### CHAPTER 7. GAS SERVICES

#### SUBCHAPTER D. CUSTOMER SERVICE AND PROTECTION

##### 16 TAC §7.460

The Railroad Commission of Texas (the Commission) adopts amendments to §7.460, relating to Suspension of Gas Utility Service Disconnection During an Extreme Weather Emergency, with changes to the proposed text as published in the October 6, 2023, issue of the *Texas Register* (48 TexReg 5796). The rule will be republished. The Commission adopts the amendments pursuant to Texas Utilities Code §105.023, which requires the Commission to adopt a classification table to guide courts in issuing civil penalties against gas utilities who disconnect service to residential customers during an extreme weather emergency. In that same issue of the *Texas Register*, the Commission proposed new §7.480 relating to Energy Conservation Programs, pursuant to House Bill 2263, 88th Legislative Session (2023). The Commission will address proposed §7.480 in a future action.

Regarding the proposed amendments to §7.460, the Commission received six comments, two from associations (Commission Shift and the Lone Star Chapter of the Sierra Club), three from companies (Atmos Energy Corporation (Atmos Energy), CenterPoint Energy Resources Corp. (CenterPoint), and Texas Gas Service Company (Texas Gas)), and one from the Office of Public Utility Counsel (OPUC). The Commission appreciates these comments.

The Lone Star Chapter of the Sierra Club and OPUC commented in support of the changes to §7.460. The Commission appreciates the support of these commenters.

Atmos Energy and CenterPoint commented that the governing statute directs the Commission to establish a classification system to be used for violations of Texas Utilities Code §104.258(c), which encompasses two violations. One violation was addressed in the proposed rule (disconnection during an extreme weather emergency), but the other violation was not. The Commission agrees that the second violation (demanding collection of full payment of bills due during an extreme weather emergency) should be included in the classification system. To address this comment, the Commission adopts in new subsection (f) the language and Figure proposed in subsection (b)(1). Subsection (f) provides that the Office of the Attorney General

of Texas on its own initiative or at the request of the Commission may file suit to recover a civil penalty for violation of subsection (b)(1) or (c) of §7.460. The classification table is adopted with a change to include violations of §7.460(c) (demanding collection of full payment of bills due during an extreme weather emergency) and outlines certain violation factors and values for each factor to determine the dollar amount of penalties to be sought.

Commission Shift commented that the Commission should consider a strict classification guide for the issuing of penalties, including the period in between extreme weather emergencies when companies can and will rush to disconnect prior to another emergency even if expected soon. The Commission disagrees with this comment and makes no change; the statutory language in Texas Utilities Code §104.258(c) does not prohibit disconnection in between extreme weather emergencies.

Texas Gas Service commented that subsection (d) should be broadened to clearly permit electronic notice. The Commission notes that it did not propose amendments related to notice requirements, so this comment is outside the scope of this rule-making; however, the rule does not prohibit electronic notice.

In addition to the changes being adopted in subsections (b)(1) and (f) previously discussed, amendments in subsection (b)(1) clarify the actions that constitute a violation. The Commission makes no changes to the language proposed in subsection (b)(1) other than to move the classification table and corresponding language to subsection (f).

The Commission adopts the amendments pursuant to Texas Utilities Code, §104.258 and §105.023.

Statutory authority: Texas Utilities Code, §104.258 and §105.023.

Cross-reference to statute: Texas Utilities Code, Chapters 104 and 105.

*§7.460. Suspension of Gas Utility Service Disconnection During an Extreme Weather Emergency.*

(a) Applicability and scope. This rule applies to gas utilities, as defined in Texas Utilities Code, §101.003(7) and §121.001, and to owners, operators, and managers of mobile home parks or apartment houses who purchase natural gas through a master meter for delivery to a dwelling unit in a mobile home park or apartment house, pursuant to Texas Utilities Code, §§124.001-124.002, within the jurisdiction of the Railroad Commission pursuant to Texas Utilities Code, §102.001. For purposes of this section, all such gas utilities and owners, operators and managers of master meter systems shall be referred to as "providers." Providers shall comply with the following service standards. A gas distribution utility shall file amended service rules incorporating these standards with the Railroad Commission in the manner prescribed by law.

(b) Disconnection prohibited. Except where there is a known dangerous condition or a use of natural gas service in a manner that is dangerous or unreasonably interferes with service to others, a provider shall not disconnect natural gas service in the following circumstances.

(1) A provider shall not disconnect a delinquent residential customer during an extreme weather emergency. An extreme weather emergency means a day when the previous day's highest temperature did not exceed 32 degrees Fahrenheit and the temperature is predicted to remain at or below that level for the next 24 hours according to the nearest National Weather Station for the county where the customer takes service.

(2) A provider shall not disconnect a delinquent residential customer for a billing period in which the provider receives a written pledge, letter of intent, purchase order, or other written notification from an energy assistance provider that it is forwarding sufficient payment to continue service.

(3) A provider shall not disconnect a delinquent residential customer on a weekend day, unless personnel or agents of the provider are available for the purpose of receiving payment or making collections and reconnecting service.

(c) Payment plans. Providers shall defer collection of the full payment of bills that are due during an extreme weather emergency until after the emergency is over, and shall work with customers to establish a payment schedule for deferred bills as set forth in §7.45 of this title (relating to Quality of Service).

(d) Notice. Beginning in the September or October billing periods utilities and owners, operators, or managers of master metered systems shall give notice as follows:

(1) Each utility shall provide a copy of this rule to the social services agencies that distribute funds from the Low Income Home Energy Assistance Program within the utility's service area.

(2) Each utility shall provide a copy of this rule to any other social service agency of which the provider is aware that provides financial assistance to low income customers in the utility's service area.

(3) Each utility shall provide a copy of this rule to all residential customers of the utility and customers who are owners, operators, or managers of master metered systems.

(4) Owners, operators, or managers of master metered systems shall provide a copy of this rule to all of their customers.

(e) In addition to the minimum standards specified in this section, providers may adopt additional or alternative requirements if the provider files a tariff with the Commission pursuant to §7.315 of this title (relating to Filing of Tariffs). The Commission shall review the tariff to ensure that at least the minimum standards of this section are met.

(f) In accordance with Texas Utilities Code §105.023, the Office of the Attorney General of Texas on its own initiative or at the request of the Commission may file suit to recover a civil penalty for a violation of subsection (b)(1) or (c) of this section. The table in this subsection contains a classification system to be used by a court when such a suit is filed.

Figure: 16 TAC §7.460(f)

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

Filed with the Office of the Secretary of State on November 15, 2023.

TRD-202304277

Haley Cochran

Assistant General Counsel

Railroad Commission of Texas

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Proposal publication date: October 6, 2023

For further information, please call: (512) 475-1295



## TITLE 22. EXAMINING BOARDS

# PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

## CHAPTER 72. BOARD FEES, LICENSE APPLICATIONS, AND RENEWALS

### 22 TAC §72.5

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §72.5 (Approved Schools and Colleges) without changes as published in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4746). The rule will not be republished. The Board will adopt a new §72.5 in a separate rulemaking. This rulemaking action will remove typographical errors in the current rule.

The Board received one comment on this rulemaking from Scott Kelley, D.C., the President of the Chiropractic Society of Texas. Dr. Kelley raised his concerns on the substance of the rule itself, not the corrections made in this rulemaking, so the Board declines to adopt any substantive changes to the rule at this time. The Board appreciates Dr. Kelley's interest in the overall subject of chiropractic college accreditation and looks forward to his input when the Board looks at the issue in depth.

The repeal is adopted under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic), and 201.302 (which requires license applicants to present evidence to the Board of attendance at a recognized chiropractic school).

No other statutes or rules are affected by this repeal.

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

Filed with the Office of the Secretary of State on November 13, 2023.

TRD-202304220

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Effective date: December 3, 2023

Proposal publication date: September 1, 2023

For further information, please call: (512) 305-6700



### 22 TAC §72.5

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §72.5 (Approved Schools and Colleges) without changes as published in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4747). The rule will not be republished. The current §72.5 is being repealed in a separate rulemaking action. This rulemaking action will correct typographical errors in the current rule; there are no substantive changes to the existing text proposed.

The Board received one comment on this rulemaking from Scott Kelley, D.C., the President of the Chiropractic Society of Texas. Dr. Kelley raised his concerns on the substance of the rule itself, not the corrections made in this rulemaking, so the Board declines to adopt any substantive changes to the rule at this time.

The Board appreciates Dr. Kelley's interest in the overall subject of chiropractic college accreditation and looks forward to his input when the Board looks at the issue in depth.

The rule is adopted under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic), and 201.302 (which requires license applicants to present evidence to the Board of attendance at a recognized chiropractic school).

No other statutes or rules are affected by this rule.

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

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TRD-202304221

Christopher Burnett  
General Counsel

Texas Board of Chiropractic Examiners

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Proposal publication date: September 1, 2023

For further information, please call: (512) 305-6700



## CHAPTER 78. SCOPE OF PRACTICE AND DELEGATION

### 22 TAC §78.4

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §78.4 (Delegation to Chiropractic Students and Recent Graduates) without changes as published in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4750). The rule will not be republished. The Board will adopt a new §78.4 (Delegation to Chiropractic Students) and a new §78.7 (Delegation to Recent Graduates) in separate rulemakings.

The overall purpose of these rulemakings is to split the current §78.4 into two separate rules. Licensees have suggested this to the Board because some have found the current rule confusing due to the slightly differing requirements for delegating to chiropractic students and recent graduates. The Board agrees that creating separate rules for students and graduates will make it easier for licensees to comply with the requirements. Therefore, the Board will also adopt a new §78.7 (Delegation to Recent Graduates). There is no substantive changes to the current requirements for delegating to chiropractic students and recent graduates.

The Board received no comments concerning this rulemaking.

The repeal is adopted under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic), and 201.451 (which authorizes the Board to adopt rules relating to delegating chiropractic tasks to assistants).

No other statutes or rules are affected by this adopted repeal.

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

Filed with the Office of the Secretary of State on November 13, 2023.

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Christopher Burnett  
General Counsel

Texas Board of Chiropractic Examiners

Effective date: December 3, 2023

Proposal publication date: September 1, 2023

For further information, please call: (512) 305-6700



### 22 TAC §78.4

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §78.4 (Delegation to Chiropractic Students) without changes as published in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4751). The rule will not be republished. The Board will adopt the repeal of the current §78.4 (Delegation to Chiropractic Students and Recent Graduates) and adopt a new §78.7 (Delegation to Recent Graduates) in separate rulemakings.

The overall purpose of these rulemakings is to split the current §78.4 into two separate rules. Licensees have suggested this to the Board because some have found the current rule confusing due to the slightly differing requirements for delegating to chiropractic students and recent graduates. The Board agrees that creating separate rules for students and graduates will make it easier for licensees to comply with the requirements. Therefore, the Board will also adopt a new §78.7 (Delegation to Recent Graduates). There will be no substantive changes to the current requirements for delegating to chiropractic students and recent graduates.

The Board received no comments on this rulemaking.

The rule is adopted under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic), and 201.451 (which authorizes the Board to adopt rules relating to delegating chiropractic tasks to assistants).

No other statutes or rules are affected by this new rule.

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

Filed with the Office of the Secretary of State on November 13, 2023.

TRD-202304223

Christopher Burnett  
General Counsel

Texas Board of Chiropractic Examiners

Effective date: December 3, 2023

Proposal publication date: September 1, 2023

For further information, please call: (512) 305-6700



### 22 TAC §78.7

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §78.7 (Delegation to Recent Graduates) without changes as published in the September 1, 2023, issue of the



*Texas Register* (48 TexReg 4752). The rule will not be republished. The Board will adopt the repeal of the current §78.4 (Delegation to Chiropractic Students and Recent Graduates) and adopt a new §78.4 (Delegation to Chiropractic Students) in separate rulemakings.

The overall purpose of these rulemakings is to split the current §78.4 into two separate rules (§78.4 for chiropractic students only and new §78.7 for recent graduates only). Licensees have suggested this to the Board because some have found the current rule confusing due to the slightly differing requirements for delegating to chiropractic students and recent graduates contained in the rule. The Board agrees that creating separate stand-alone rules for students and graduates will make it easier for licensees to comply with the requirements. There will be no substantive changes to the current requirements for delegating to chiropractic students and recent graduates.

The Board received no comments concerning this rulemaking.

The rule is adopted under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic), and 201.451 (which authorizes the Board to adopt rules relating to delegating chiropractic tasks to assistants).

No other statutes or rules are affected by this adopted rule.

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

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TRD-202304224  
Christopher Burnett  
General Counsel  
Texas Board of Chiropractic Examiners  
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For further information, please call: (512) 305-6700



## PART 15. TEXAS STATE BOARD OF PHARMACY

### CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

#### 22 TAC §283.12

The Texas State Board of Pharmacy adopts amendments to §283.12, concerning Licenses for Military Service Members, Military Veterans, and Military Spouses. These amendments are adopted without changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5382). The rule will not be republished.

The amendments establish procedures for a military service member who is currently licensed in good standing by a jurisdiction with licensing requirements that are substantially similar to Texas's requirements to obtain an interim pharmacist license, in accordance with Senate Bill 422 and make grammatical corrections.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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Daniel Carroll, Pharm.D.  
Executive Director  
Texas State Board of Pharmacy  
Effective date: December 4, 2023  
Proposal publication date: September 22, 2023  
For further information, please call: (512) 305-8033



## CHAPTER 291. PHARMACIES SUBCHAPTER A. ALL CLASSES OF PHARMACIES

#### 22 TAC §291.3

The Texas State Board of Pharmacy adopts amendments to §291.3, concerning Required Notifications. These amendments are adopted without changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5384). The rule will not be republished.

The amendments clarify that a pharmacy must notify the board in writing if the pharmacy temporarily closes for the loss of a pharmacist-in-charge and clarify the notification requirements for amending a pharmacy license.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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Daniel Carroll, Pharm.D.  
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Texas State Board of Pharmacy  
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For further information, please call: (512) 305-8033



## 22 TAC §291.5

The Texas State Board of Pharmacy adopts amendments to §291.5, concerning Closing a Pharmacy. These amendments are adopted without changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5388). The rule will not be republished.

The amendments provide that a pharmacy may temporarily close for the loss of a pharmacist-in-charge if the pharmacy timely notifies the board in writing of the temporary closure.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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Daniel Carroll, Pharm.D.  
Executive Director  
Texas State Board of Pharmacy  
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Proposal publication date: September 22, 2023  
For further information, please call: (512) 305-8033



## 22 TAC §291.6

The Texas State Board of Pharmacy adopts amendments to §291.6, concerning Pharmacy License Fees. These amendments are adopted without changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5389). The rule will not be republished.

The amendments increase pharmacy license fees based on expected expenses, specify the application fee for an initial or renewed certificate to provide remote pharmacy services, and remove the fee for issuance of a duplicate renewal certificate.

No comments were received.

The amendments are adopted under §§551.002, 554.006, and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing

the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets Section 554.006(a) as authorizing the agency to adopt fees to cover the cost of administering Subtitle J, Title 3, Occupations Code. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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

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Daniel Carroll, Pharm.D.  
Executive Director  
Texas State Board of Pharmacy  
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Proposal publication date: September 22, 2023  
For further information, please call: (512) 305-8033



## 22 TAC §291.8

The Texas State Board of Pharmacy adopts amendments to §291.8, concerning Return of Prescription Drugs. These amendments are adopted without changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5390). The rule will not be republished.

The amendments update the name of a state agency.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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Daniel Carroll, Pharm.D.  
Executive Director  
Texas State Board of Pharmacy  
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Proposal publication date: September 22, 2023  
For further information, please call: (512) 305-8033



## SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

### 22 TAC §291.33

The Texas State Board of Pharmacy adopts amendments to §291.33, concerning Operational Standards. These amendments are adopted with changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5392). The rule will be republished.

The amendments specify prepackaging and labeling requirements for a participating provider to dispense donated prescription drugs under Chapter 442, Health and Safety Code, in accordance with House Bill 4332.

The Board received comments from George Wang, Ph.D., with SIRUM in support of the amendments and suggesting changes to certain terms and phrases for consistency with statutory language. The Board agreed and made changes to the labeling and recordkeeping requirements to align with the language in §442.0515, Health and Safety Code.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

#### §291.33. Operational Standards.

##### (a) Licensing requirements.

(1) A Class A pharmacy shall register annually or biennially with the board on a pharmacy license application provided by the board, following the procedures as specified in §291.1 of this title (relating to Pharmacy License Application).

(2) A Class A pharmacy which changes ownership shall notify the board within ten days of the change of ownership and apply for a new and separate license as specified in §291.3 of this title (relating to Required Notifications).

(3) A Class A pharmacy which changes location and/or name shall notify the board as specified in §291.3 of this title.

(4) A Class A pharmacy owned by a partnership or corporation which changes managing officers shall notify the board in writing of the names of the new managing officers within ten days of the change, following the procedures as specified in §291.3 of this title.

(5) A Class A pharmacy shall notify the board in writing within ten days of closing, following the procedures as specified in §291.5 of this title (relating to Closing a Pharmacy).

(6) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(7) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance and renewal of a license and the issuance of an amended license.

(8) A Class A pharmacy, licensed under the provisions of the Act, §560.051(a)(1), which also operates another type of pharmacy which would otherwise be required to be licensed under the Act, §560.051(a)(2) concerning Nuclear Pharmacy (Class B), is not required

to secure a license for such other type of pharmacy; provided, however, such licensee is required to comply with the provisions of Subchapter C of this chapter (relating to Nuclear Pharmacy (Class B)), to the extent such sections are applicable to the operation of the pharmacy.

(9) A Class A pharmacy engaged in the compounding of non-sterile preparations shall comply with the provisions of §291.131 of this title (relating to Pharmacies Compounding Non-Sterile Preparations).

(10) A Class A pharmacy shall not compound sterile preparations.

(11) A Class A pharmacy engaged in the provision of remote pharmacy services, including storage and dispensing of prescription drugs, shall comply with the provisions of §291.121 of this title (relating to Remote Pharmacy Services).

(12) Class A pharmacy engaged in centralized prescription dispensing and/or prescription drug or medication order processing shall comply with the provisions of §291.123 of this title (relating to Central Prescription Drug or Medication Order Processing) and/or §291.125 of this title (relating to Centralized Prescription Dispensing).

##### (b) Environment.

###### (1) General requirements.

(A) The pharmacy shall be arranged in an orderly fashion and kept clean. All required equipment shall be clean and in good operating condition.

(B) A Class A pharmacy shall have a sink with hot and cold running water within the pharmacy, exclusive of restroom facilities, available to all pharmacy personnel and maintained in a sanitary condition.

(C) A Class A pharmacy which serves the general public shall contain an area which is suitable for confidential patient counseling.

###### (i) Such counseling area shall be:

(I) easily accessible to both patient and pharmacists and not allow patient access to prescription drugs; and

(II) designed to maintain the confidentiality and privacy of the pharmacist/patient communication.

(ii) In determining whether the area is suitable for confidential patient counseling and designed to maintain the confidentiality and privacy of the pharmacist/patient communication, the board may consider factors such as the following:

(I) the proximity of the counseling area to the check-out or cash register area;

(II) the volume of pedestrian traffic in and around the counseling area;

(III) the presence of walls or other barriers between the counseling area and other areas of the pharmacy; and

(IV) any evidence of confidential information being overheard by persons other than the patient or patient's agent or the pharmacist or agents of the pharmacist.

(D) The pharmacy shall be properly lighted and ventilated.

(E) The temperature of the pharmacy shall be maintained within a range compatible with the proper storage of drugs. The temperature of the refrigerator shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration.

(F) Animals, including birds and reptiles, shall not be kept within the pharmacy and in immediately adjacent areas under the control of the pharmacy. This provision does not apply to fish in aquariums, service animals accompanying disabled persons, or animals for sale to the general public in a separate area that is inspected by local health jurisdictions.

(G) If the pharmacy has flammable materials, the pharmacy shall have a designated area for the storage of flammable materials. Such area shall meet the requirements set by local and state fire laws.

(2) Security.

(A) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of prescription drugs, and records for such drugs.

(B) The prescription department shall be locked by key, combination or other mechanical or electronic means to prohibit unauthorized access when a pharmacist is not on-site except as provided in subparagraphs (C) and (D) of this paragraph and paragraph (3) of this subsection. The following is applicable:

(i) If the prescription department is closed at any time when the rest of the facility is open, the prescription department must be physically or electronically secured. The security may be accomplished by means such as floor to ceiling walls; walls, partitions, or barriers at least 9 feet 6 inches high; electronically monitored motion detectors; pull down sliders; or other systems or technologies that will secure the pharmacy from unauthorized entrance when the pharmacy is closed. Pharmacies licensed prior to June 1, 2009, shall be exempt from this provision unless the pharmacy changes location. Change of location shall include the relocation of the pharmacy within the licensed address. A pharmacy licensed prior to June 1, 2009 that files a change of ownership but does not change location shall be exempt from the provisions.

(ii) The pharmacy's key, combination, or other mechanical or electronic means of locking the pharmacy may not be duplicated without the authorization of the pharmacist-in-charge or owner.

(iii) At a minimum, the pharmacy must have a basic alarm system with off-site monitoring and perimeter and motion sensors. The pharmacy may have additional security by video surveillance camera systems.

(C) Prior to authorizing individuals to enter the prescription department, the pharmacist-in-charge or owner may designate persons who may enter the prescription department to perform functions, other than dispensing functions or prescription processing, documented by the pharmacist-in-charge including access to the prescription department by other pharmacists, pharmacy personnel and other individuals. The pharmacy must maintain written documentation of authorized individuals other than individuals employed by the pharmacy who accessed the prescription department when a pharmacist is not on-site.

(D) Only persons designated either by name or by title including such titles as "relief" or "floaters" pharmacist, in writing by the pharmacist-in-charge may unlock the prescription department except in emergency situations. An additional key to or instructions on accessing the prescription department may be maintained in a secure location outside the prescription department for use during an emergency or as designated by the pharmacist-in-charge.

(E) Written policies and procedures for the pharmacy's security shall be developed and implemented by the pharmacist-in-

charge and/or the owner of the pharmacy. Such policies and procedures may include quarterly audits of controlled substances commonly abused or diverted; perpetual inventories for the comparison of the receipt, dispensing, and distribution of controlled substances; monthly reports from the pharmacy's wholesaler(s) of controlled substances purchased by the pharmacy; opening and closing procedures; product storage and placement; and central management oversight.

(3) Temporary absence of pharmacist.

(A) On-site supervision by pharmacist.

(i) If a pharmacy is staffed by only one pharmacist, the pharmacist may leave the prescription department for short periods of time without closing the prescription department and removing pharmacy technicians, pharmacy technician trainees, and other pharmacy personnel from the prescription department provided the following conditions are met:

(I) at least one pharmacy technician remains in the prescription department;

(II) the pharmacist remains on-site at the licensed location of the pharmacy and is immediately available;

(III) the pharmacist reasonably believes that the security of the prescription department will be maintained in his or her absence. If in the professional judgment of the pharmacist, the pharmacist determines that the prescription department should close during his or her absence, then the pharmacist shall close the prescription department and remove the pharmacy technicians, pharmacy technician trainees, and other pharmacy personnel from the prescription department during his or her absence; and

(IV) a notice is posted which includes the following information:

(-a-) the pharmacist is on a break and the time the pharmacist will return; and

(-b-) pharmacy technicians may begin the processing of prescription drug orders or refills brought in during the pharmacist's absence, but the prescription or refill may not be delivered to the patient or the patient's agent until the pharmacist verifies the accuracy of the prescription.

(ii) During the time a pharmacist is absent from the prescription department, only pharmacy technicians who have completed the pharmacy's training program may perform the following duties, provided a pharmacist verifies the accuracy of all acts, tasks, and functions performed by the pharmacy technicians prior to delivery of the prescription to the patient or the patient's agent:

(I) initiating and receiving refill authorization requests;

(II) entering prescription data into a data processing system;

(III) taking a stock bottle from the shelf for a prescription;

(IV) preparing and packaging prescription drug orders (e.g., counting tablets/capsules, measuring liquids, or placing them in the prescription container);

(V) affixing prescription labels and auxiliary labels to the prescription container;

(VI) prepackaging and labeling prepackaged drugs;

(VII) receiving oral prescription drug orders for dangerous drugs and reducing these orders to writing, either manually or electronically;

(VIII) transferring or receiving a transfer of original prescription information for dangerous drugs on behalf of a patient; and

(IX) contacting a prescriber for information regarding an existing prescription for a dangerous drug.

(iii) Upon return to the prescription department, the pharmacist shall:

(I) conduct a drug regimen review as specified in subsection (c)(2) of this section; and

(II) verify the accuracy of all acts, tasks, and functions performed by the pharmacy technicians prior to delivery of the prescription to the patient or the patient's agent.

(iv) An agent of the pharmacist may deliver a previously verified prescription to the patient or his or her agent provided a record of the delivery is maintained containing the following information:

(I) date of the delivery;

(II) unique identification number of the prescription drug order;

(III) patient's name;

(IV) patient's phone number or the phone number of the person picking up the prescription; and

(V) signature of the person picking up the prescription.

(v) Any prescription delivered to a patient when a pharmacist is not in the prescription department must meet the requirements for a prescription delivered to a patient as described in subsection (c)(1)(F) of this section.

(vi) During the times a pharmacist is absent from the prescription department a pharmacist intern shall be considered a registered pharmacy technician and may perform only the duties of a registered pharmacy technician.

(vii) In pharmacies with two or more pharmacists on duty, the pharmacists shall stagger their breaks and meal periods so that the prescription department is not left without a pharmacist on duty.

(B) Pharmacist is off-site.

(i) The prescription department must be secured with procedures for entry during the time that a pharmacy is not under the continuous on-site supervision of a pharmacist and the pharmacy is not open for pharmacy services.

(ii) Pharmacy technicians and pharmacy technician trainees may not perform any duties of a pharmacy technician or pharmacy technician trainee during the time that the pharmacist is off-site.

(iii) A pharmacy may use an automated dispensing and delivery system as specified in §291.121(d) of this title for pick-up of a previously verified prescription by a patient or patient's agent.

(iv) An agent of the pharmacist may deliver a previously verified prescription to a patient or patient's agent during short periods of time when a pharmacist is off-site, provided the following conditions are met:

(I) short periods of time may not exceed two consecutive hours in a 24 hour period;

(II) a notice is posted which includes the following information:

(-a-) the pharmacist is off-site and not present in the pharmacy;

(-b-) no new prescriptions may be prepared at the pharmacy but previously verified prescriptions may be delivered to the patient or the patient's agent; and

(-c-) the date/time when the pharmacist will return;

(III) the pharmacy must maintain documentation of the absences of the pharmacist(s); and

(IV) the prescription department is locked and secured to prohibit unauthorized entry.

(v) During the time a pharmacist is absent from the prescription department and is off-site, a record of prescriptions delivered must be maintained and contain the following information:

(I) date and time of the delivery;

(II) unique identification number of the prescription drug order;

(III) patient's name;

(IV) patient's phone number or the phone number of the person picking up the prescription; and

(V) signature of the person picking up the prescription.

(vi) Any prescription delivered to a patient when a pharmacist is not on-site at the pharmacy must meet the requirements for a prescription delivered to a patient as described in subsection (c)(1)(F) of this section.

(c) Prescription dispensing and delivery.

(1) Patient counseling and provision of drug information.

(A) To optimize drug therapy, a pharmacist shall communicate to the patient or the patient's agent information about the prescription drug or device which in the exercise of the pharmacist's professional judgment the pharmacist deems significant, such as the following:

(i) name and description of the drug or device;

(ii) dosage form, dosage, route of administration, and duration of drug therapy;

(iii) special directions and precautions for preparation, administration, and use by the patient;

(iv) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

(v) techniques for self-monitoring of drug therapy;

(vi) proper storage;

(vii) refill information; and

(viii) action to be taken in the event of a missed dose.

(B) Such communication shall be:

(i) provided to new and existing patients of a pharmacy with each new prescription drug order. A new prescription drug

order is one that has not been dispensed by the pharmacy to the patient in the same dosage and strength within the last year;

(ii) provided for any prescription drug order dispensed by the pharmacy on the request of the patient or patient's agent;

(iii) communicated orally unless the patient or patient's agent is not at the pharmacy or a specific communication barrier prohibits such oral communication;

(iv) documented by recording the initials or identification code of the pharmacist providing the counseling in the prescription dispensing record as follows:

(I) on the original hard-copy prescription, provided the counseling pharmacist clearly records his or her initials on the prescription for the purpose of identifying who provided the counseling;

(II) in the pharmacy's data processing system;

(III) in an electronic logbook; or

(IV) in a hard-copy log; and

(v) reinforced with written information relevant to the prescription and provided to the patient or patient's agent. The following is applicable concerning this written information:

(I) Written information must be in plain language designed for the patient and printed in an easily readable font size comparable to but no smaller than ten-point Times Roman. This information may be provided to the patient in an electronic format, such as by e-mail, if the patient or patient's agent requests the information in an electronic format and the pharmacy documents the request.

(II) When a compounded preparation is dispensed, information shall be provided for the major active ingredient(s), if available.

(III) For new drug entities, if no written information is initially available, the pharmacist is not required to provide information until such information is available, provided:

(-a-) the pharmacist informs the patient or the patient's agent that the product is a new drug entity and written information is not available;

(-b-) the pharmacist documents the fact that no written information was provided; and

(-c-) if the prescription is refilled after written information is available, such information is provided to the patient or patient's agent.

(IV) The written information accompanying the prescription or the prescription label shall contain the statement "Do not flush unused medications or pour down a sink or drain." A drug product on a list developed by the Federal Food and Drug Administration of medicines recommended for disposal by flushing is not required to bear this statement.

(C) Only a pharmacist may verbally provide drug information to a patient or patient's agent and answer questions concerning prescription drugs. Non-pharmacist personnel and/or the pharmacy's computer system may not ask questions of a patient or patient's agent which are intended to screen and/or limit interaction with the pharmacist.

(D) Nothing in this subparagraph shall be construed as requiring a pharmacist to provide consultation when a patient or patient's agent refuses such consultation. The pharmacist shall document such refusal for consultation.

(E) In addition to the requirements of subparagraphs (A) - (D) of this paragraph, if a prescription drug order is delivered to the patient at the pharmacy, the following is applicable:

(i) So that a patient will have access to information concerning his or her prescription, a prescription may not be delivered to a patient unless a pharmacist is in the pharmacy, except as provided in subsection (b)(3) of this section.

(ii) Any prescription delivered to a patient when a pharmacist is not in the pharmacy must meet the requirements described in subparagraph (F) of this paragraph.

(F) In addition to the requirements of subparagraphs (A) - (D) of this paragraph, if a prescription drug order is delivered to the patient or his or her agent at the patient's residence or other designated location, the following is applicable:

(i) The information as specified in subparagraph (A) of this paragraph shall be delivered with the dispensed prescription in writing.

(ii) If prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacy shall provide a toll-free telephone line which is answered during normal business hours to enable communication between the patient and a pharmacist.

(iii) The pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container in both English and Spanish the local and, if applicable, toll-free telephone number of the pharmacy and the statement: "Written information about this prescription has been provided for you. Please read this information before you take the medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions at (insert the pharmacy's local and toll-free telephone numbers)."

(iv) The pharmacy shall maintain and use adequate storage or shipment containers and use shipping processes to ensure drug stability and potency. Such shipping processes shall include the use of appropriate packaging material and/or devices to ensure that the drug is maintained at an appropriate temperature range to maintain the integrity of the medication throughout the delivery process.

(v) The pharmacy shall use a delivery system which is designed to ensure that the drugs are delivered to the appropriate patient.

(G) The provisions of this paragraph do not apply to patients in facilities where drugs are administered to patients by a person required to do so by the laws of the state (i.e., nursing homes).

(2) Pharmaceutical care services.

(A) Drug regimen review.

(i) For the purpose of promoting therapeutic appropriateness, a pharmacist shall, prior to or at the time of dispensing a prescription drug order, review the patient's medication record. Such review shall at a minimum identify clinically significant:

(I) known allergies;

(II) rational therapy-contraindications;

(III) reasonable dose and route of administration;

(IV) reasonable directions for use;

(V) duplication of therapy;

(VI) drug-drug interactions;

- (VII) drug-food interactions;
- (VIII) drug-disease interactions;
- (IX) adverse drug reactions; and
- (X) proper utilization, including overutilization

or underutilization.

(ii) Upon identifying any clinically significant conditions, situations, or items listed in clause (i) of this subparagraph, the pharmacist shall take appropriate steps to avoid or resolve the problem including consultation with the prescribing practitioner. The pharmacist shall document such occurrences as specified in subparagraph (C) of this paragraph.

(iii) The drug regimen review may be conducted by remotely accessing the pharmacy's electronic database from outside the pharmacy by:

(I) an individual Texas licensed pharmacist employee of the pharmacy provided the pharmacy establishes controls to protect the privacy of the patient and the security of confidential records; or

(II) a pharmacist employed by a Class E pharmacy provided the pharmacies have entered into a written contract or agreement which outlines the services to be provided and the responsibilities and accountabilities of each pharmacy in compliance with federal and state laws and regulations.

(iv) Prior to dispensing, any questions regarding a prescription drug order must be resolved with the prescriber and written documentation of these discussions made and maintained as specified in subparagraph (C) of this paragraph.

(B) Other pharmaceutical care services which may be provided by pharmacists include, but are not limited to, the following:

- (i) managing drug therapy as delegated by a practitioner as allowed under the provisions of the Medical Practice Act;
- (ii) administering immunizations and vaccinations under written protocol of a physician;
- (iii) managing patient compliance programs;
- (iv) providing preventative health care services; and
- (v) providing case management of patients who are being treated with high-risk or high-cost drugs, or who are considered "high risk" due to their age, medical condition, family history, or related concern.

(C) Documentation of consultation. When a pharmacist consults a prescriber as described in subparagraph (A) of this paragraph, the pharmacist shall document on the prescription or in the pharmacy's data processing system associated with the prescription such occurrences and shall include the following information:

- (i) date the prescriber was consulted;
- (ii) name of the person communicating the prescriber's instructions;
- (iii) any applicable information pertaining to the consultation; and
- (iv) initials or identification code of the pharmacist performing the consultation clearly recorded for the purpose of identifying the pharmacist who performed the consultation.

(3) Substitution of generically equivalent drugs or interchangeable biological products. A pharmacist may dispense a gener-

ically equivalent drug or interchangeable biological product and shall comply with the provisions of §309.3 of this title (relating to Substitution Requirements).

(4) Substitution of dosage form.

(A) As specified in §562.012 of the Act, a pharmacist may dispense a dosage form of a drug product different from that prescribed, such as a tablet instead of a capsule or liquid instead of tablets, provided:

- (i) the patient consents to the dosage form substitution; and
- (ii) the dosage form so dispensed:
  - (I) contains the identical amount of the active ingredients as the dosage prescribed for the patient;
  - (II) is not an enteric-coated or time release product; and
  - (III) does not alter desired clinical outcomes.

(B) Substitution of dosage form may not include the substitution of a product that has been compounded by the pharmacist unless the pharmacist contacts the practitioner prior to dispensing and obtains permission to dispense the compounded product.

(5) Therapeutic Drug Interchange. A switch to a drug providing a similar therapeutic response to the one prescribed shall not be made without prior approval of the prescribing practitioner. This paragraph does not apply to generic substitution. For generic substitution, see the requirements of paragraph (3) of this subsection.

(A) The patient shall be notified of the therapeutic drug interchange prior to, or upon delivery of, the dispensed prescription to the patient. Such notification shall include:

- (i) a description of the change;
- (ii) the reason for the change;
- (iii) whom to notify with questions concerning the change; and
- (iv) instructions for return of the drug if not wanted by the patient.

(B) The pharmacy shall maintain documentation of patient notification of therapeutic drug interchange which shall include:

- (i) the date of the notification;
- (ii) the method of notification;
- (iii) a description of the change; and
- (iv) the reason for the change.

(C) The provisions of this paragraph do not apply to prescriptions for patients in facilities where drugs are administered to patients by a person required to do so by the laws of this state if the practitioner issuing the prescription has agreed to use of a formulary that includes a listing of therapeutic interchanges that the practitioner has agreed to allow. The pharmacy must maintain a copy of the formulary including a list of the practitioners that have agreed to the formulary and the signatures of these practitioners.

(6) Prescription containers.

(A) A drug dispensed pursuant to a prescription drug order shall be dispensed in a child-resistant container unless:

- (i) the patient or the practitioner requests the prescription not be dispensed in a child-resistant container; or

(ii) the product is exempted from requirements of the Poison Prevention Packaging Act of 1970.

(B) A drug dispensed pursuant to a prescription drug order shall be dispensed in an appropriate container as specified on the manufacturer's container.

(C) Prescription containers or closures shall not be re-used. However, if a patient or patient's agent has difficulty reading or understanding a prescription label, a prescription container may be reused provided:

(i) the container is designed to provide audio-recorded information about the proper use of the prescription medication;

(ii) the container is reused for the same patient;

(iii) the container is cleaned; and

(iv) a new safety closure is used each time the prescription container is reused.

(7) Labeling.

(A) At the time of delivery of the drug, the dispensing container shall bear a label in plain language and printed in an easily readable font size, unless otherwise specified, with at least the following information:

(i) name, address and phone number of the pharmacy;

(ii) unique identification number of the prescription that is printed in an easily readable font size comparable to but no smaller than ten-point Times Roman;

(iii) date the prescription is dispensed;

(iv) initials or an identification code of the dispensing pharmacist;

(v) name of the prescribing practitioner;

(vi) if the prescription was signed by a pharmacist, the name of the pharmacist who signed the prescription for a dangerous drug under delegated authority of a physician as specified in Subtitle B, Chapter 157, Occupations Code;

(vii) name of the patient or if such drug was prescribed for an animal, the species of the animal and the name of the owner that is printed in an easily readable font size comparable to but no smaller than ten-point Times Roman. The name of the patient's partner or family member is not required to be on the label of a drug prescribed for a partner for a sexually transmitted disease or for a patient's family members if the patient has an illness determined by the Centers for Disease Control and Prevention, the World Health Organization, or the Governor's office to be pandemic;

(viii) instructions for use that are printed in an easily readable font size comparable to but no smaller than ten-point Times Roman;

(ix) quantity dispensed;

(x) appropriate ancillary instructions such as storage instructions or cautionary statements such as warnings of potential harmful effects of combining the drug product with any product containing alcohol;

(xi) if the prescription is for a Schedule II - IV controlled substance, the statement "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed";

(xii) if the pharmacist has selected a generically equivalent drug or interchangeable biological product pursuant to the provisions of the Act, Chapter 562, the statement "Substituted for Brand Prescribed" or "Substituted for 'Brand Name'" where "Brand Name" is the actual name of the brand name product prescribed;

(xiii) the name and strength of the actual drug or biological product dispensed that is printed in an easily readable size comparable to but no smaller than ten-point Times Roman, unless otherwise directed by the prescribing practitioner;

(I) The name shall be either:

(-a-) the brand name; or

(-b-) if no brand name, then the generic drug or interchangeable biological product name and name of the manufacturer or distributor of such generic drug or interchangeable biological product. (The name of the manufacturer or distributor may be reduced to an abbreviation or initials, provided the abbreviation or initials are sufficient to identify the manufacturer or distributor. For combination drug products or non-sterile compounded drug preparations having no brand name, the principal active ingredients shall be indicated on the label).

(II) Except as provided in clause (xii) of this subparagraph, the brand name of the prescribed drug or biological product shall not appear on the prescription container label unless it is the drug product actually dispensed.

(xiv) if the drug is dispensed in a container other than the manufacturer's original container, the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacturer, the beyond-use-date shall be one year from the date the drug is dispensed or the manufacturer's expiration date, whichever is earlier. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication; and

(xv) either on the prescription label or the written information accompanying the prescription, the statement "Do not flush unused medications or pour down a sink or drain." A drug product on a list developed by the Federal Food and Drug Administration of medicines recommended for disposal by flushing is not required to bear this statement.

(B) If the prescription label required in subparagraph (A) of this paragraph is printed in a type size smaller than ten-point Times Roman, the pharmacy shall provide the patient written information containing the information as specified in subparagraph (A) of this paragraph in an easily readable font size comparable to but no smaller than ten-point Times Roman.

(C) The label is not required to include the initials or identification code of the dispensing pharmacist as specified in subparagraph (A) of this paragraph if the identity of the dispensing pharmacist is recorded in the pharmacy's data processing system. The record of the identity of the dispensing pharmacist shall not be altered in the pharmacy's data processing system.

(D) The dispensing container is not required to bear the label as specified in subparagraph (A) of this paragraph if:

(i) the drug is prescribed for administration to an ultimate user who is institutionalized in a licensed health care institution (e.g., nursing home, hospice, hospital);

(ii) no more than a 90-day supply is dispensed at one time;



(iii) the drug is not in the possession of the ultimate user prior to administration;

(iv) the pharmacist-in-charge has determined that the institution:

(I) maintains medication administration records which include adequate directions for use for the drug(s) prescribed;

(II) maintains records of ordering, receipt, and administration of the drug(s); and

(III) provides for appropriate safeguards for the control and storage of the drug(s); and

(v) the dispensing container bears a label that adequately:

(I) identifies the:

(-a-) pharmacy by name and address;

(-b-) unique identification number of the prescription;

prescription;

(-c-) name and strength of the drug dispensed;

(-d-) name of the patient; and

(-e-) name of the prescribing practitioner or,

if applicable, the name of the pharmacist who signed the prescription drug order;

(II) if the drug is dispensed in a container other than the manufacturer's original container, specifies the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacturer, the beyond-use-date shall be one year from the date the drug is dispensed or the manufacturer's expiration date, whichever is earlier. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication; and

(III) sets forth the directions for use and cautionary statements, if any, contained on the prescription drug order or required by law.

#### (8) Returning Undelivered Medication to Stock.

(A) A pharmacist may not accept an unused prescription or drug, in whole or in part, for the purpose of resale or re-dispensing to any person after the prescription or drug has been originally dispensed or sold, except as provided in §291.8 of this title (relating to Return of Prescription Drugs) or Subchapter M, Chapter 431, Health and Safety Code, or Chapter 442, Health and Safety Code. Prescriptions that have not been picked up by or delivered to the patient or patient's agent may be returned to the pharmacy's stock for dispensing.

(B) A pharmacist shall evaluate the quality and safety of the prescriptions to be returned to stock.

(C) Prescriptions returned to stock for dispensing shall not be mixed within the manufacturer's container.

(D) Prescriptions returned to stock for dispensing should be used as soon as possible and stored in the dispensing container. The expiration date of the medication shall be the lesser of one year from the dispensing date on the prescription label or the manufacturer's expiration date if dispensed in the manufacturer's original container.

(E) At the time of dispensing, the prescription medication shall be placed in a new prescription container and not dispensed in the previously labeled container unless the label can be completely

removed. However, if the medication is in the manufacturer's original container, the pharmacy label must be removed so that no confidential patient information is released.

#### (9) Redistribution of Donated Prepackaged Prescription Drugs.

(A) A participating provider may dispense to a recipient donated prescription drugs that are prepackaged and labeled in accordance with §442.0515, Health and Safety Code, and this paragraph.

(B) Drugs may be prepackaged in quantities suitable for distribution to a recipient only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(C) The label of a prepackaged prescription drug a participating provider dispenses to a recipient shall indicate:

(i) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(ii) participating provider's lot number;

(iii) participating provider's beyond use date; and

(iv) quantity of the drug, if the quantity is greater than one.

(D) Records of prepackaged prescription drugs dispensed to a recipient shall be maintained to show:

(i) name of the drug, strength, and dosage form;

(ii) participating provider's lot number;

(iii) manufacturer or distributor;

(iv) manufacturer's lot number;

(v) manufacturer's expiration date;

(vi) quantity per prepackaged unit;

(vii) number of prepackaged units;

(viii) date packaged;

(ix) name, initials, or electronic signature of the preparer; and

(x) written or electronic signature of the responsible pharmacist.

(E) Stock packages, repackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(d) Equipment and supplies. Class A pharmacies dispensing prescription drug orders shall have the following equipment and supplies:

(1) data processing system including a printer or comparable equipment;

(2) refrigerator;

(3) adequate supply of child-resistant, light-resistant, tight, and if applicable, glass containers;

(4) adequate supply of prescription, poison, and other applicable labels;

(5) appropriate equipment necessary for the proper preparation of prescription drug orders; and

(6) metric-apothecary weight and measure conversion charts.

(e) Library. A reference library shall be maintained which includes the following in hard-copy or electronic format:

(1) current copies of the following:

- (A) Texas Pharmacy Act and rules;
- (B) Texas Dangerous Drug Act and rules;
- (C) Texas Controlled Substances Act and rules; and

(D) Federal Controlled Substances Act and rules (or official publication describing the requirements of the Federal Controlled Substances Act and rules);

(2) at least one current or updated reference from each of the following categories:

(A) a patient prescription drug information reference text or leaflets which are designed for the patient and must be available to the patient;

(B) at least one current or updated general drug information reference which is required to contain drug interaction information including information needed to determine severity or significance of the interaction and appropriate recommendations or actions to be taken; and

(C) if the pharmacy dispenses veterinary prescriptions, a general reference text on veterinary drugs; and

(3) basic antidote information and the telephone number of the nearest Regional Poison Control Center.

(f) Drugs.

(1) Procurement and storage.

(A) The pharmacist-in-charge shall have the responsibility for the procurement and storage of drugs, but may receive input from other appropriate staff relative to such responsibility.

(B) Prescription drugs and devices and nonprescription Schedule V controlled substances shall be stored within the prescription department or a locked storage area.

(C) All drugs shall be stored at the proper temperature, as defined in the USP/NF and §291.15 of this title (relating to Storage of Drugs).

(2) Out-of-date drugs or devices.

(A) Any drug or device bearing an expiration date shall not be dispensed beyond the expiration date of the drug or device.

(B) Outdated drugs or devices shall be removed from dispensing stock and shall be quarantined together until such drugs or devices are disposed of properly.

(3) Nonprescription Schedule V controlled substances.

(A) Schedule V controlled substances containing codeine, dihydrocodeine, or any of the salts of codeine or dihydrocodeine may not be distributed without a prescription drug order from a practitioner.

(B) A pharmacist may distribute nonprescription Schedule V controlled substances which contain no more than 15 milligrams of opium per 29.5729 ml or per 28.35 Gm provided:

(i) such distribution is made only by a pharmacist; a nonpharmacist employee may not distribute a nonprescription Schedule V controlled substance even if under the supervision of a pharma-

cist; however, after the pharmacist has fulfilled professional and legal responsibilities, the actual cash, credit transaction, or delivery may be completed by a nonpharmacist:

(ii) not more than 240 ml (eight fluid ounces), or not more than 48 solid dosage units of any substance containing opium, may be distributed to the same purchaser in any given 48-hour period without a prescription drug order;

(iii) the purchaser is at least 18 years of age; and

(iv) the pharmacist requires every purchaser not known to the pharmacist to furnish suitable identification (including proof of age where appropriate).

(C) A record of such distribution shall be maintained by the pharmacy in a bound record book. The record shall contain the following information:

(i) true name of the purchaser;

(ii) current address of the purchaser;

(iii) name and quantity of controlled substance purchased;

(iv) date of each purchase; and

(v) signature or written initials of the distributing pharmacist.

(4) Class A Pharmacies may not sell, purchase, trade or possess prescription drug samples, unless the pharmacy meets the requirements as specified in §291.16 of this title (relating to Samples).

(g) Prepackaging of drugs.

(1) Drugs may be prepackaged in quantities suitable for internal distribution only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(2) The label of a prepackaged unit shall indicate:

(A) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(B) facility's lot number;

(C) facility's beyond use date; and

(D) quantity of the drug, if the quantity is greater than one.

(3) Records of prepackaging shall be maintained to show:

(A) name of the drug, strength, and dosage form;

(B) facility's lot number;

(C) manufacturer or distributor;

(D) manufacturer's lot number;

(E) manufacturer's expiration date;

(F) quantity per prepackaged unit;

(G) number of prepackaged units;

(H) date packaged;

(I) name, initials, or electronic signature of the preparer; and

(J) signature, or electronic signature of the responsible pharmacist.

(4) Stock packages, repackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(h) Customized patient medication packages.

(1) Purpose. In lieu of dispensing two or more prescribed drug products in separate containers, a pharmacist may, with the consent of the patient, the patient's caregiver, or the prescriber, provide a customized patient medication package (patient med-pak).

(2) Label.

(A) The patient med-pak shall bear a label stating:

(i) the name of the patient;

(ii) the unique identification number for the patient med-pak itself and a separate unique identification number for each of the prescription drug orders for each of the drug products contained therein;

(iii) the name, strength, physical description or identification, and total quantity of each drug product contained therein;

(iv) the directions for use and cautionary statements, if any, contained in the prescription drug order for each drug product contained therein;

(v) if applicable, a warning of the potential harmful effect of combining any form of alcoholic beverage with any drug product contained therein;

(vi) any storage instructions or cautionary statements required by the official compendia;

(vii) the name of the prescriber of each drug product;

(viii) the name, address, and telephone number of the pharmacy;

(ix) the initials or an identification code of the dispensing pharmacist;

(x) the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacturer, the beyond-use-date shall be one year from the date the med-pak is dispensed or the earliest manufacturer's expiration date for a product contained in the med-pak if it is less than one-year from the date dispensed. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication;

(xi) either on the prescription label or the written information accompanying the prescription, the statement "Do not flush unused medications or pour down a sink or drain." A drug product on a list developed by the Federal Food and Drug Administration of medicines recommended for disposal by flushing is not required to bear this statement; and

(xii) any other information, statements, or warnings required for any of the drug products contained therein.

(B) If the patient med-pak allows for the removal or separation of the intact containers therefrom, each individual container shall bear a label identifying each of the drug product contained therein.

(C) The dispensing container is not required to bear the label as specified in subparagraph (A) of this paragraph if:

(i) the drug is prescribed for administration to an ultimate user who is institutionalized in a licensed health care institution (e.g., nursing home, hospice, hospital);

(ii) no more than a 90-day supply is dispensed at one time;

(iii) the drug is not in the possession of the ultimate user prior to administration;

(iv) the pharmacist-in-charge has determined that the institution:

(I) maintains medication administration records which include adequate directions for use for the drug(s) prescribed;

(II) maintains records of ordering, receipt, and administration of the drug(s); and

(III) provides for appropriate safeguards for the control and storage of the drug(s); and

(v) the dispensing container bears a label that adequately:

(I) identifies the:

(-a-) pharmacy by name and address;

(-b-) name and strength of each drug product

dispensed;

(-c-) name of the patient; and

(-d-) name of the prescribing practitioner of each drug product, or the pharmacist who signed the prescription drug order;

(II) the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacturer, the beyond-use-date shall be one year from the date the med-pak is dispensed or the earliest manufacturer's expiration date for a product contained in the med-pak if it is less than one-year from the date dispensed. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication; and

(III) for each drug product sets forth the directions for use and cautionary statements, if any, contained on the prescription drug order or required by law.

(3) Labeling. The patient med-pak shall be accompanied by a patient package insert, in the event that any drug contained therein is required to be dispensed with such insert as accompanying labeling. Alternatively, such required information may be incorporated into a single, overall educational insert provided by the pharmacist for the total patient med-pak.

(4) Packaging. In the absence of more stringent packaging requirements for any of the drug products contained therein, each container of the patient med-pak shall comply with official packaging standards. Each container shall be either not reclosable or so designed as to show evidence of having been opened.

(5) Guidelines. It is the responsibility of the dispensing pharmacist when preparing a patient med-pak, to take into account any applicable compendial requirements or guidelines and the physical and chemical compatibility of the dosage forms placed within each container, as well as any therapeutic incompatibilities that may attend the simultaneous administration of the drugs.

(6) Recordkeeping. In addition to any individual prescription filing requirements, a record of each patient med-pak shall be made and filed. Each record shall contain, as a minimum:

(A) the name and address of the patient;

(B) the unique identification number for the patient med-pak itself and a separate unique identification number for each of the prescription drug orders for each of the drug products contained therein;

(C) the name of the manufacturer or distributor and lot number for each drug product contained therein;

(D) information identifying or describing the design, characteristics, or specifications of the patient med-pak sufficient to allow subsequent preparation of an identical patient med-pak for the patient;

(E) the date of preparation of the patient med-pak and the beyond-use date that was assigned;

(F) any special labeling instructions; and

(G) the initials or an identification code of the dispensing pharmacist.

(7) The patient med-pak label is not required to include the initials or identification code of the dispensing pharmacist as specified in paragraph (2)(A) of this subsection if the identity of the dispensing pharmacist is recorded in the pharmacy's data processing system. The record of the identity of the dispensing pharmacist shall not be altered in the pharmacy's data processing system.

(i) Automated devices and systems in a pharmacy.

(1) Automated counting devices. If a pharmacy uses automated counting devices:

(A) the pharmacy shall have a method to calibrate and verify the accuracy of the automated counting device and document the calibration and verification on a routine basis;

(B) the devices may be loaded with bulk drugs only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist;

(C) the label of an automated counting device container containing a bulk drug shall indicate the brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(D) records of loading bulk drugs into an automated counting device shall be maintained to show:

(i) name of the drug, strength, and dosage form;

(ii) manufacturer or distributor;

(iii) manufacturer's lot number;

(iv) expiration date;

(v) date of loading;

(vi) name, initials, or electronic signature of the person loading the automated counting device; and

(vii) name, initials, or electronic signature of the responsible pharmacist; and

(E) the automated counting device shall not be used until a pharmacist verifies that the system is properly loaded and affixes his or her name, initials, or electronic signature to the record as specified in subparagraph (D) of this paragraph.

(2) Automated pharmacy dispensing systems.

(A) Authority to use automated pharmacy dispensing systems. A pharmacy may use an automated pharmacy dispensing system to fill prescription drug orders provided that:

(i) the pharmacist-in-charge is responsible for the supervision of the operation of the system;

(ii) the automated pharmacy dispensing system has been tested by the pharmacy and found to dispense accurately. The pharmacy shall make the results of such testing available to the board upon request; and

(iii) the pharmacy will make the automated pharmacy dispensing system available for inspection by the board for the purpose of validating the accuracy of the system.

(B) Automated pharmacy dispensing systems may be stocked or loaded by a pharmacist or by a pharmacy technician or pharmacy technician trainee under the supervision of a pharmacist.

(C) Quality assurance program. A pharmacy which uses an automated pharmacy dispensing system to fill prescription drug orders shall operate according to a quality assurance program of the automated pharmacy dispensing system which:

(i) requires continuous monitoring of the automated pharmacy dispensing system; and

(ii) establishes mechanisms and procedures to test the accuracy of the automated pharmacy dispensing system at least every twelve months and whenever any upgrade or change is made to the system and documents each such activity.

(D) Policies and procedures of operation.

(i) When an automated pharmacy dispensing system is used to fill prescription drug orders, it shall be operated according to written policies and procedures of operation. The policies and procedures of operation shall:

(I) provide for a pharmacist's review, approval, and accountability for the transmission of each original or new prescription drug order to the automated pharmacy dispensing system before the transmission is made;

(II) provide for access to the automated pharmacy dispensing system for stocking and retrieval of medications which is limited to licensed healthcare professionals or pharmacy technicians acting under the supervision of a pharmacist;

(III) require that a pharmacist checks, verifies, and documents that the correct medication and strength of bulk drugs, prepackaged containers, or manufacturer's unit of use packages were properly stocked, filled, and loaded in the automated pharmacy dispensing system prior to initiating the fill process; alternatively, an electronic verification system may be used for verification of manufacturer's unit of use packages or prepacked medication previously verified by a pharmacist;

(IV) provide for an accountability record to be maintained that documents all transactions relative to stocking and removing medications from the automated pharmacy dispensing system;

(V) require a prospective drug regimen review is conducted as specified in subsection (c)(2) of this section; and

(VI) establish and make provisions for documentation of a preventative maintenance program for the automated pharmacy dispensing system.

(ii) A pharmacy that uses an automated pharmacy dispensing system to fill prescription drug orders shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(E) Recovery Plan. A pharmacy that uses an automated pharmacy dispensing system to fill prescription drug orders shall maintain a written plan for recovery from a disaster or any other situation which interrupts the ability of the automated pharmacy dispensing system to provide services necessary for the operation of the pharmacy. The written plan for recovery shall include:

(i) planning and preparation for maintaining pharmacy services when an automated pharmacy dispensing system is experiencing downtime;

(ii) procedures for response when an automated pharmacy dispensing system is experiencing downtime; and

(iii) procedures for the maintenance and testing of the written plan for recovery.

(F) Final check of prescriptions dispensed using an automated pharmacy dispensing system. For the purpose of §291.32(c)(2)(D) of this title (relating to Personnel), a pharmacist must perform the final check of all prescriptions prior to delivery to the patient to ensure that the prescription is dispensed accurately as prescribed.

(i) This final check shall be considered accomplished if:

(I) a check of the final product is conducted by a pharmacist after the automated pharmacy dispensing system has completed the prescription and prior to delivery to the patient; or

(II) the following checks are conducted:

(-a-) if the automated pharmacy dispensing system contains bulk stock drugs, a pharmacist verifies that those drugs have been accurately stocked as specified in subparagraph (D)(i)(III) of this paragraph;

(-b-) if the automated pharmacy dispensing system contains manufacturer's unit of use packages or prepackaged medication previously verified by a pharmacist, an electronic verification system has confirmed that the medications have been accurately stocked as specified in subparagraph (D)(i)(III) of this paragraph;

(-c-) a pharmacist checks the accuracy of the data entry of each original or new prescription drug order entered into the automated pharmacy dispensing system; and

(-d-) an electronic verification process is used to verify the proper prescription label has been affixed to the correct medication container, prepackaged medication or manufacturer unit of use package for the correct patient.

(ii) If the final check is accomplished as specified in clause (i)(II) of this subparagraph, the following additional requirements must be met:

(I) the dispensing process must be fully automated from the time the pharmacist releases the prescription to the automated pharmacy dispensing system until a completed, labeled prescription ready for delivery to the patient is produced;

(II) the pharmacy has conducted initial testing and has a continuous quality assurance program which documents that the automated pharmacy dispensing system dispenses accurately as specified in subparagraph (C) of this paragraph;

(III) the automated pharmacy dispensing system documents and maintains:

(-a-) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in clause (i)(II) of this subparagraph; and

(-b-) the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist, pharmacy techni-

cian, or pharmacy technician trainee who performs any other portion of the dispensing process; and

(IV) the pharmacy establishes mechanisms and procedures to test the accuracy of the automated pharmacy dispensing system at least every month rather than every twelve months as specified in subparagraph (C) of this paragraph.

(3) Automated checking device.

(A) For the purpose of §291.32(c)(2)(D) of this title, the final check of a dispensed prescription shall be considered accomplished using an automated checking device provided a check of the final product is conducted by a pharmacist prior to delivery to the patient or the following checks are performed:

(i) the drug used to fill the order is checked through the use of an automated checking device which verifies that the drug is labeled and packaged accurately; and

(ii) a pharmacist checks the accuracy of each original or new prescription drug order and is responsible for the final check of the order through the automated checking device.

(B) If the final check is accomplished as specified in subparagraph (A) of this paragraph, the following additional requirements must be met:

(i) the pharmacy has conducted initial testing of the automated checking device and has a continuous quality assurance program which documents that the automated checking device accurately confirms that the correct drug and strength has been labeled with the correct label for the correct patient;

(ii) the pharmacy documents and maintains:

(I) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in subparagraph (A)(i) of this paragraph; and

(II) the name(s) initials, or identification code(s) and specific activity(ies) of each pharmacist, pharmacy technician, or pharmacy technician trainee who performs any other portion of the dispensing process;

(iii) the pharmacy establishes mechanisms and procedures to test the accuracy of the automated checking device at least monthly; and

(iv) the pharmacy establishes procedures to ensure that errors identified by the automated checking device may not be overridden by a pharmacy technician and must be reviewed and corrected by a pharmacist.

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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Daniel Carroll, Pharm.D.

Executive Director

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For further information, please call: (512) 305-8033

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## SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

### 22 TAC §291.74

The Texas State Board of Pharmacy adopts amendments to §291.74, concerning Operational Standards. These amendments are adopted without changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5403). The rule will not be republished.

The amendments re-insert rule text that was inadvertently removed and make grammatical corrections.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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## SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

### 22 TAC §291.121

The Texas State Board of Pharmacy adopts amendments to §291.121, concerning Remote Pharmacy Services. These amendments are adopted without changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5412). The rule will not be republished.

The amendments clarify how the board provides a license to engage in remote pharmacy services.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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### 22 TAC §291.129

The Texas State Board of Pharmacy adopts amendments to §291.129, concerning Satellite Pharmacy. These amendments are adopted without changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5424). The rule will not be republished.

The amendments clarify how the board provides a satellite pharmacy license.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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## CHAPTER 295. PHARMACISTS

### 22 TAC §295.5

The Texas State Board of Pharmacy adopts amendments to §295.5, concerning Pharmacist License or Renewal Fees. These amendments are adopted without changes to the proposed text as published in the September 22, 2023, issue of

the *Texas Register* (48 TexReg 5427). The rule will not be republished.

The amendments increase pharmacist license fees based on expected expenses.

No comments were received.

The amendments are adopted under §§551.002, 554.006, and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets Section 554.006(a) as authorizing the agency to adopt fees to cover the cost of administering Subtitle J, Title 3, Occupations Code. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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## 22 TAC §295.8

The Texas State Board of Pharmacy adopts amendments to §295.8, concerning Continuing Education Requirements. These amendments are adopted without changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5428). The rule will not be republished.

The amendments remove continuing education requirements that have expired.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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## 22 TAC §295.9

The Texas State Board of Pharmacy adopts amendments to §295.9, concerning Inactive License. These amendments are adopted without changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5432). The rule will not be republished.

The amendments remove a continuing education requirement for which the statutory authority has expired from the conditions for reactivation of an inactive license and make a grammatical correction.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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## CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

### 22 TAC §297.10

The Texas State Board of Pharmacy adopts amendments to §297.10, concerning Registration for Military Service Members, Military Veterans, and Military Spouses. These amendments are adopted without changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5433). The rule will not be republished.

The amendments establish procedures for a military service member who is currently registered in good standing by a jurisdiction with registration requirements that are substantially

similar to Texas's requirements to obtain an interim pharmacy technician registration, in accordance with Senate Bill 422 and make grammatical corrections.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 131. FREESTANDING EMERGENCY MEDICAL CARE FACILITIES

The Texas Health and Human Services Commission (HHSC) adopts the repeal of Texas Administrative Code (TAC), Title 25, Part 1, Chapter 131, concerning Freestanding Emergency Medical Care Facilities, Subchapter A, concerning General Provisions; Subchapter B, concerning Licensing Requirements; Subchapter C, concerning Operational Requirements; Subchapter D, concerning Inspection and Investigation Procedures; and Subchapter E, concerning Enforcement. The repealed subchapters consist of §§131.1, 131.2, 131.21 - 131.31, 131.41 - 131.68, 131.81, 131.82, and 131.101 - 131.109.

The repeal of §§131.1, 131.2, 131.21 - 131.31, 131.41 - 131.68, 131.81, 131.82, and 131.101 - 131.109 are adopted without changes to the proposed repealed text as published in the July 14, 2023, issue of the *Texas Register* (48 TexReg 3799). These rules will not be republished.

#### BACKGROUND AND JUSTIFICATION

The repeals are necessary to remove the rules in Chapter 131, Freestanding Emergency Medical Care Facilities, Subchapters A - E, and adopt new rules in 26 TAC Chapter 509, Freestanding Emergency Medical Care Facilities.

The new rules in Title 26, Chapter 509 are adopted elsewhere in this issue of the *Texas Register* and are substantially similar to the repealed rules.

#### COMMENTS

The 31-day comment period ended August 14, 2023.

During this period, HHSC received comments regarding the proposed repeal from the Texas Association of Freestanding Emergency Centers (TAFEC). A summary of comments relating to the rules and HHSC's responses follows.

Comment: TAFEC expressed appreciation for HHSC's efforts to update and refresh the freestanding emergency medical care facility rules by repealing 25 TAC Chapter 131 and replacing the chapter with 26 TAC Chapter 509.

Response: HHSC acknowledges this comment.

### SUBCHAPTER A. GENERAL PROVISIONS

#### 25 TAC §131.1, §131.2

##### STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §254.101, which authorizes HHSC to adopt rules regarding freestanding emergency medical care facilities.

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

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Karen Ray

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Department of State Health Services

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### SUBCHAPTER B. LICENSING REQUIREMENTS

#### 25 TAC §§131.21 - 131.31

##### STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §254.101, which authorizes HHSC to adopt rules regarding freestanding emergency medical care facilities.

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## SUBCHAPTER C. OPERATIONAL REQUIREMENTS

### 25 TAC §§131.41 - 131.68

#### STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §254.101, which authorizes HHSC to adopt rules regarding freestanding emergency medical care facilities.

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## SUBCHAPTER D. INSPECTION AND INVESTIGATION PROCEDURES

### 25 TAC §131.81, §131.82

#### STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §254.101, which authorizes HHSC to adopt rules regarding freestanding emergency medical care facilities.

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Karen Ray

Chief Counsel

Department of State Health Services

Effective date: December 4, 2023

Proposal publication date: July 14, 2023

For further information, please call: (512) 834-4591



## SUBCHAPTER E. ENFORCEMENT

### 25 TAC §§131.101 - 131.109

#### STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §254.101, which authorizes HHSC to adopt rules regarding freestanding emergency medical care facilities.

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

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

TRD-202304230

Karen Ray

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Department of State Health Services

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## PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

### CHAPTER 701. POLICIES AND PROCEDURES

#### 25 TAC §701.25

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") adopts the amendments to 25 Texas Administrative Code §701.25 without changes to the proposed amendments as published in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4773); therefore, the rule will not be republished. The amendments relate to CPRIT's electronic signature policy.

#### Reasoned Justification

CPRIT amends its electronic signature policy to include grant applicants so that the convenience and responsibilities associated with electronic signatures are available to grant applicants as well as grant recipients.

#### Summary of Public Comments and Staff Recommendation

CPRIT received no public comments regarding the proposed amendments to §701.25; CPRIT staff recommends moving forward with adoption of the amendments.

The rule changes are adopted under the authority of the Texas Health and Safety Code Annotated, § 102.108, which provides the Institute with broad rule-making authority to administer the chapter, including rules for awarding grants.

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

Filed with the Office of the Secretary of State on November 17, 2023.

TRD-202304312

Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

Effective date: December 7, 2023

Proposal publication date: September 1, 2023

For further information, please call: (512) 305-8487



## TITLE 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 509. FREESTANDING EMERGENCY MEDICAL CARE FACILITIES

The Texas Health and Human Services Commission (HHSC) adopts new rules in Texas Administrative Code (TAC), Title 26, Part 1, Chapter 509, concerning Freestanding Emergency Medical Care Facilities. The new chapter consists of §§509.1, 509.2, 509.21 - 509.30, 509.41 - 509.66, 509.81 - 509.86, and 509.101 - 509.108.

New §§509.2, 509.24, 509.26, 509.48, 509.51 - 509.54, 509.61, 509.62, and 509.81 - 509.83 are adopted with changes to the proposed text as published in the July 14, 2023, issue of the *Texas Register* (48 TexReg 3801). These rules will be republished.

New §§509.1, 509.21 - 509.23, 509.25, 509.27 - 509.30, 509.41 - 509.47, 509.49, 509.50, 509.55 - 509.60, 509.63 - 509.66, 509.84 - 509.86, and 509.101 - 509.108 are adopted without changes to the proposed text as published in the July 14, 2023, issue of the *Texas Register* (48 TexReg 3801). These rules will not be republished.

#### BACKGROUND AND JUSTIFICATION

The new sections are necessary to comply with House Bill (H.B.) 2041 and H.B. 1112, 86th Legislature, Regular Session, 2019, which amended Texas Health and Safety Code (HSC), Chapter 254, relating to the regulation of Freestanding Emergency Medical Care Facilities. H.B. 2041 requires freestanding emergency medical care (FEMC) facilities to comply with updated advertising requirements, which includes disclosure of facility fees and clarification of health benefit plans that are accepted by the facility, and it requires FEMC facilities to provide a disclosure statement to patients. H.B. 2041 requires an FEMC facility that closes or whose license is expired, suspended, or revoked to remove their signs from the facility. H.B. 1112 similarly requires a closed FEMC facility or an FEMC facility whose license is expired, suspended, or revoked to remove their signage. This proposal also

complies with Senate Bill (S.B.) 425, 84th Legislature, Regular Session, 2015, which amended HSC Chapter 254 to require an FEMC facility to post a notice regarding facility fees and provide other consumer information to patients.

The new sections also revise sections in the subchapters on Inspection and Investigation Procedures and Enforcement to outline facility documentation expectations to increase consistency across facility rule sets, update language to reflect the transition to HHSC and the relocation of rules from 25 TAC to 26 TAC, and correct outdated references and citations.

To implement this change, rules in 25 TAC Chapter 131, Freestanding Emergency Medical Care Facilities, are being repealed and new rules adopted in 26 TAC Chapter 509, Freestanding Emergency Medical Care Facilities. The repeal of 25 TAC Chapter 131 is adopted elsewhere in this issue of the *Texas Register*.

#### COMMENTS

The 31-day comment period ended August 14, 2023.

During this period, HHSC received comments regarding the proposed rules from seven commenters representing the Texas Academy of Physician Assistants (TAPA), Texas Association of Freestanding Emergency Centers (TAFEC), Texas Association of Health Plans (TAHP), Texas Medical Association (TMA), Texas Nurses Association (TNA), Texas Nurse Practitioners (TNP), and Texas Society of Anesthesiologists (TSA). A summary of comments relating to the rules and HHSC's responses follow.

Comment: TMA appreciated the changes in these newly proposed rules that incorporated the comments TMA submitted to HHSC when this project was previously posted in the *Texas Register* for comment in January 2021.

Response: HHSC acknowledges this comment.

Comment: TAHP expressed support for rules implementing consumer protections regarding FEMC facilities.

Response: HHSC acknowledges this comment.

Comment: TAFEC said they appreciate HHSC's efforts to update and refresh the FEMC rules by repealing 25 TAC Chapter 131 and replacing the chapter with 26 TAC Chapter 509.

Response: HHSC acknowledges this comment.

Comment: TAFEC expressed concern with the definition of "premises" at §509.2(28), renumbered to §509.2(29), because FEMC facilities are responsible for providing patient care to any patient on their property, which may include areas outside of a building. TAFEC cited examples where an FEMC facility may deliver care in the parking lot or a patient's vehicle, including providing emergency care to deliver an infant, tending to an injury that would be dangerous to move a patient, or providing care during the COVID-19 pandemic to avoid people congregating in the building. TAFEC proposed amending the "premises" definition to a "building, parking lot and other structures (temporary or permanent) on the Owner's property where emergency care is delivered."

Response: HHSC declines to revise §509.2(28), renumbered to §509.2(29), because services cannot be provided in a parking lot, and other temporary or permanent structures, including mobile, transportable, and relocatable units, are governed under 25 TAC Chapter 131, Subchapters F and G.

Comment: TMA recommended HHSC clarify the definition of "violation" at §509.2(36), renumbered to §509.2(37), because the phrase "another statute" in the definition is too broad. TMA expressed concern with HHSC considering a failure to comply with any Texas statute as a violation under the chapter. TMA recommended removing this language or adding language to clarify it is another statute "relating to the licensure or operation of a free-standing emergency medical care facility."

Response: HHSC revises §509.2(36), renumbered to §509.2(37), by adding the suggested language.

Comment: TAHP expressed support for §509.21(c)(4), which limits an FEMC facility's license to emergency care services and procedures related to providing emergency care. TAHP referenced the definition for an FEMC facility in HSC Chapter 254, which is the governing statute for FEMC facilities, and stated the definition clearly defines an FEMC as a facility structurally separate and distinct from a hospital that provides emergency care. TAHP also stated that while some FEMC facilities have made attempts to expand their authority legislatively, those attempts have failed, and the proposed rules correctly clarify FEMC facilities may not legally provide non-emergency services.

Response: HHSC acknowledges this comment.

Comment: TAHP recommended HSHC add language to FEMC initial and renewal applications to require an FEMC facility to state whether the facility is compliant with the requirements at HSC §§254.155, 254.156, and 254.157. TAHP noted instances of FEMC facilities appearing to be in violation of H.B. 2041 and cited an HHSC report that 15 facilities have been subject to an administrative penalty for violations of these consumer protection requirements since September 2021. TAHP stated that it is critical for HHSC to enforce these requirements because violations can lead to devastating financial consequences for Texans. TAHP also stated reminding FEMC facilities on application forms about these requirements would make FEMC facilities more likely to comply, which would reduce enforcement actions and lead to fewer unexpected bills for patients.

Response: HHSC declines to revise §509.24 and §509.25 because §509.41(l) and (m) address the requirements at HSC §254.157, §509.60(h) addresses the requirements at HSC §254.155, and §509.60(i) addresses the requirements at HSC §254.156.

Comment: TMA recommended HHSC change "shall" to "may" in §509.24(g) regarding HHSC issuing an initial license. TMA expressed concern with the mandatory language prohibiting HHSC from exercising discretion when determining whether to issue a license, including if there were "red flags" disclosed in the application requirements under §509.24(c)(8)-(9).

Response: HHSC declines to revise §509.24(g) because HHSC is required by HSC §254.053(e) to issue a license if HHSC determines the applicant and facility meet the requirements under HSC Chapter 254 and this chapter.

Comment: TMA recommended HHSC change "shall" to "may" in §509.25(c) regarding HHSC issuing a renewal license to prevent an unintended interpretation and application of this subsection.

Response: HHSC declines to revise §509.25(c) because HHSC is required by HSC §254.053(e) to issue a license if HHSC determines the applicant and the facility meets the requirements under HSC Chapter 254 and this chapter.

Comment: TAFEC expressed concern with the inactive status timelines in §509.26, which requires a facility that does not provide services under its license for more than five calendar days to notify HHSC and be placed on inactive status and clarifies if the inactive status lasts longer than 60 days, HHSC will consider the facility closed and the facility must surrender its license. TAFEC stated this timeframe is too abbreviated to capture the facility's actual status and noted a facility could be closed for a variety of reasons, which may not allow the facility to promptly fix the issue.

TAFEC proposed amending §509.26 to require a facility to notify HHSC if it does not provide services for 14 consecutive days or 30 days in a rolling 60-day period. TAFEC also suggested requiring the notice the facility provides HHSC to include the last date the facility was open, reason for the disruption, and anticipated reopening date. TAFEC also proposed language clarifying if the reason for the disruption was unavoidable or an "act of God" and the anticipated reopening date is fewer than 60 days away, the facility's status will not change. TAFEC recommended clarifying if the facility fails to reinstate operations by the anticipated date given to HHSC, the facility will file an updated notice no later than the original anticipated date of reopening. TAFEC further recommended clarifying if the facility has an anticipated reopening date that is more than 60 days away, but less than 120 days, or the facility fails to file the required notice, HHSC will place the facility on inactive status. TAFEC also proposed language clarifying if the facility has not provided services in more than 120 days, HHSC will require the facility to close and terminate its license.

Response: HHSC revises §509.26(a) by replacing "does not provide services under its license" with "is not staffed and open" to clarify a facility could be operational but not providing services to patients because there are no patients at the facility.

HHSC declines to revise the timeframe in §509.26(a) because the five-calendar-day timeframe is enough time to address most emergency situations. HHSC notes if the facility is not operational for more than five calendar days and its license is placed on inactive status, the facility may reactivate its license under §509.26(a)(4). HHSC also notes this rule is not intended to apply to statewide emergency events, but rather localized emergencies.

Comment: TMA recommended HHSC amend §509.29(d)(1) and (3) to add language about HHSC declining to issue a license to reflect a completed application may contain information that disqualifies an applicant.

Response: HHSC declines to revise §509.29(d)(1) and (3) because the additional language is unnecessary since HHSC will not issue a license if a facility does not meet licensing requirements.

Comment: While TAFEC expressed appreciation for the change from a one-year license term to a two-year term so their members must only apply for licensure renewal once every two years, TAFEC expressed concern with the doubled initial and renewal licensing fees and stated the fees could be a barrier to entry or expansion for FEMC facility owners and operators. TAFEC noted facilities experience challenges with receiving reimbursement from third-party payers because they will not contract with FEMC facilities and frequently challenge their out-of-network payments. TAFEC stated that while the federal No Surprises Act and state surprise billing laws have provided FEMC facilities with additional resources to seek reimbursement from commercial payors, these laws have also increased

costs for the informal dispute resolution process. TAFEC also noted that since the federal COVID-19 public health emergency ended, FEMC facilities are no longer allowed to participate and receive payments through the Medicare program. TAFEC further noted the FEMC facility license fee is higher than similar facilities, including ambulatory surgical centers and hospitals.

Response: HHSC declines to revise §509.30. HSC §254.102 grants HHSC the authority to set fees reasonable and necessary to defray the costs of administering the chapter. HHSC notes the fee amount per year described in §509.30 did not change from the per year amount in repealed 25 TAC §131.30, which was \$7,410 for an initial license and \$3,035 for a renewal license. The fees in §509.30, which are \$14,820 for an initial license and \$6,070 for a renewal license, reflect the two-year licensure period. Section 509.30 aligns with HSC §254.053(f), which requires the facility pay the license fee upon renewal and states the term for a license issued under HSC Chapter 254 is two years. The licensure fee amount in §509.30 covers the cost of HHSC's ongoing oversight and regulation for each year of the license term and is reasonable and necessary to defray the cost of administering HSC Chapter 254.

Comment: TMA recommended HHSC remove the word "control" from §509.41(a) regarding an FEMC facility's governing body's responsibilities. TMA stated this word could have negative implications regarding the facility's medical staff's ability to exercise professional medical judgement relating to a patient's health care needs without financial or other outside pressure.

Response: HHSC declines to revise §509.41(a) because the language is consistent with the "governing body" definition at §509.2(15), the equivalent repealed rule at 25 TAC §131.41(a), and other HHSC acute health care facility rules, including the general and special hospital rule at 25 TAC §133.41(f)(1).

Comment: TMA recommended HHSC amend §509.41(b) to add language stating the governing body shall develop the policies and procedures with the advice of medical staff members.

Response: HHSC declines to revise §509.41(b) because the agency's role is not to prescribe individual business models for FEMC facilities, and a facility may determine the best process for the facility under this subsection, provided the facility meets statutory and rule requirements.

Comment: TMA recommended HHSC amend §509.41(h) to add language stating the governing body must exercise its duties to appoint and reappoint medical staff and assign or curtail medical privileges after considering input from the facility's medical staff.

Response: HHSC declines to revise §509.41(h) because the agency's role is not to prescribe individual business models for FEMC facilities, and a facility may determine the best process for the facility under this subsection, provided the facility meets statutory and rule requirements.

Comment: TMA expressed support for HHSC including basic credentialing requirements and recommended HHSC amend §509.45(d)(5) to only require a physician who is not board certified or board eligible in emergency medicine to have a current certification in advanced cardiac life support (ACLS), pediatric advanced life support (PALS), and advanced trauma life support (ATLS). TMA stated this amendment would exempt physicians who are currently board certified in emergency medicine from being required to have current ACLS, PALS, and ATLS certifications, because TMA stated being board certified "covers these areas."

Response: HHSC declines to revise §509.45(d)(5), because more than one board provides certification in emergency medicine, and at least one of those boards does not require ACLS or PALS. Further, due to regular updates, the ACLS renewal cycle is two years while board certification is at least five years and may be up to 10 years. HHSC notes that for health and safety reasons, it is important for all members of the medical team to have up-to-date training.

Comment: TMA recommended HHSC amend §509.45(d)(5) to include "board eligible" physicians because TMA stated these physicians are highly trained and have graduated from an accredited emergency medicine program.

Response: HHSC declines to revise §509.45(d)(5) because §509.45(d)(5) does not exclude physicians without board certification to be privileged as a physician at an FEMC facility, provided they meet the requirements under this paragraph.

Comment: TSA recommended amending §509.48(e) to add the American Academy of Anesthesiologist Assistants to the list of association guidelines a facility must consider when the facility develops the written anesthesia service policies and standards under this subsection.

Response: HHSC declines to revise §509.48(e) because the requested association guidelines fall under the standards applicable to licensed professionals qualified to administer anesthesia, which FEMC facility medical staff are required to consider when developing the written anesthesia service policies and practice guidelines.

Comment: TSA expressed concern with §509.48(f) allowing a certified registered nurse anesthetist (CRNA) to order anesthesia and sedation for delivery by a registered nurse (RN). TSA cited Texas Occupations Code §157.001, which allows a physician to delegate certain medical acts, and stated there are no provisions in Texas Occupations Code Chapter 301, the Texas Medical Board rules, and the Texas Board of Nursing rules allowing an advance practice registered nurse (APRN), including a CRNA, to delegate performing a medical act to an RN. TSA recommended removing the language in §509.48(f) allowing a CRNA to order an RN to administer topical anesthesia, local anesthesia, minimal sedation, and moderate sedation.

TMA expressed similar concerns with §509.48(f), stating the subsection is inconsistent with scope of practice limitations and requirements in Texas law because a CRNA may not delegate anesthesia administration to an RN. TMA also suggested removing language in §509.48(f) allowing an RN to administer anesthesia.

Response: HHSC revises §509.48(f) in response to these comments by clarifying a qualified RN who is not a CRNA may administer certain anesthesia or sedation on the order of a physician, podiatrist, dentist, or other practitioner practicing within the scope of their license and education and removing language allowing a CRNA to order an RN to administer anesthesia.

HHSC declines to remove the language allowing an RN to administer anesthesia because the language requires the RN to perform the acts in accordance with all applicable Texas Board of Nursing rules, policies, directives, and guidelines.

Comment: TSA recommended amending §509.48(i) to remove "RN" from the list of practitioners who can perform a post-anesthesia evaluation. TSA stated the Conditions of Participation for rural emergency hospitals (REHs) do not include an RN as a

qualified anesthesia practitioner who must evaluate a patient for proper anesthesia recovery.

Response: HHSC declines to revise §509.48(i) because the federal Conditions of Participation for REHs do not apply to FEMC facilities.

Comment: TNA and TNP expressed concern with §509.51(d) only allowing physicians to read, date, sign, and authenticate examination reports and stated the subsection makes the FEMC facility rules more restrictive than those for hospitals, which TNA and TNP stated usually have more access to physicians. TNA and TNP also stated Texas Occupations Code §601.252 expressly allows nurses to provide radiological services and the Texas Board of Nursing rules at 22 TAC §217.4 requires nurses to register before performing radiological services. TNA and TNP noted there is a national certifying body that credentials radiology nurses. TNA and TNP recommended HHSC amend §509.51(d) to remove the restriction or clarify a physician may delegate radiological services and assessments as necessary.

Response: HHSC revises §509.51 by adding "or other practitioner within the scope of their license and education" to subsection (d).

Comment: TAPA expressed concern with physician assistants (PAs) not being listed as a provider allowed to order radiology services in §509.51(g)(1). TAPA noted PAs may be included in the term "other authorized practitioner," but recommended expressly including PAs under this paragraph to avoid confusion in FEMC facilities.

TMA also expressed concern with the language in §509.51(g)(1) regarding an APRN's scope of practice, which does not include ordering radiology services, and stated it is not clear to whom "authorized practitioner" refers. TMA recommended amending §509.51(g)(1) to remove the reference to "authorized practitioner" and clarify an APRN can only order radiology services under the delegation and supervision of a physician.

Response: HHSC revises §509.51(g)(1) in response to these comments to require radiologic services to be performed only on the order of a physician, podiatrist, dentist, or other practitioner who is practicing within the scope of their license and education.

Comment: TAPA expressed concern with §509.51(g)(2) limiting the use of radioactive sources to physicians. TAPA stated PAs are trained and qualified to use radioactive sources and to provide radiology services. TAPA also noted there are no similar restrictions in existing general and special hospital rules and requested HHSC align the FEMC rules with the hospital rules to allow PAs to use radioactive sources.

TNA and TNP also expressed concern with §509.51(g)(2) limiting the use of radioactive sources to physicians. TNA and TNP stated Texas Occupations Code §601.252 expressly allows nurses to provide radiological services and the Texas Board of Nursing rules at 22 TAC §217.4 requires nurses to register before performing radiological services. TNA and TNP recommended either removing the restriction on nurses from §509.51(g)(2) or clarifying physicians may delegate radiological services and assessments as necessary.

Response: HHSC declines to revise §509.51(g)(2) because radioactive sources are specific to nuclear medicine and do not include all radiologic services.

Comment: TMA expressed concern with the language in §509.52(f) allowing an "advanced practice registered nurse

or other authorized practitioner" to order respiratory services because "prescription of therapeutic or corrective measures" is specifically excluded from the definitions of nursing in the Nursing Practice Act. TMA also stated the meaning of "authorized practitioner" is unclear, and Texas Occupations Code Chapter 604, which governs respiratory care practitioners, only mentions acts being performed by physicians.

Response: HHSC revises §509.52(f) by removing "advance practice registered nurse" and clarifying that the "other practitioner" must be "practicing within the scope of their license."

Comment: TMA recommended replacing the term "practitioners" in §509.53(c) with "dentist or podiatrist" because Texas Occupations Code only refers to a physician, podiatrist, or dentist performing surgery to the extent within the scope of their respective licenses. TMA noted it was unclear who "practitioner" would include because the chapter definition excludes physicians, podiatrists, and dentists.

Response: HHSC revises §509.53(c) by adding the terms "podiatrist" and "dentist" and clarifying that the "other practitioner" is someone other than a physician, podiatrist, or dentist who is practicing within the scope of their license and education.

Comment: TMA recommended HHSC amend §509.53(j) to replace "physician or practitioner" with "physician, dentist, or podiatrist."

Response: HHSC revises §509.53(j) by adding the terms "podiatrist" and "dentist" and clarifying that the "other practitioner" is someone other than a physician, podiatrist, or dentist who is practicing within the scope of their license and education.

Comment: TAPA expressed concern with PAs being omitted from §509.54(i)(14), which requires a patient's medical record to include evidence of the patient's evaluation by a physician or APRN before dismissal. TAPA stated that, like APRNs, PAs can evaluate patients before dismissal in a hospital setting and requested PAs be added to this paragraph.

Response: HHSC revises §509.54(i)(14) as suggested.

Comment: TMA expressed concern with §509.61(b) expanding the reporting obligations relating to illegal, unethical, or unprofessional conduct because the subsection does not make a distinction between this type of conduct and abuse, neglect, and exploitation. TMA stated current law requires illegal, unethical, or unprofessional conduct incidents to be reported when there is reasonable belief of such conduct by the facility or facility employee, and abuse, neglect, and exploitation incidents to be reported when there is a reasonable belief anyone perpetrated those acts. TMA recommended amending §509.61(b) to separate abuse, neglect, and exploitation reporting requirements from illegal, unethical, and unprofessional conduct reporting requirements.

Response: HHSC revises §509.61 as suggested by relocating the reporting requirements for illegal, unethical, and unprofessional conduct from subsection (b) to new subsection (c) and renumbering the subsequent subsections.

Comment: TAFEC expressed concern with §509.62(a)(3) requiring facilities to report to HHSC emergency patient transfers from an FEMC facility to a hospital. TAFEC stated since FEMC facilities are designated to provide emergency care, patients who present at an FEMC facility are already undergoing an emergency. TAFEC further stated facilities often transfer patients to hospitals and such transfers are not an "indication that some-

thing has gone wrong." TAFEC noted this reporting requirement would be burdensome for facilities and would not convey much useful information to HHSC. TAFEC requested HHSC either not adopt the proposed changes to §509.62 or amend this section to require monthly emergency transfer reports or more narrowly define the term "emergency transfer" to only include transfers due to a new condition, injury, or other incident which occurred at the FEMC.

Response: HHSC revises §509.62(a)(3) to clarify a facility must only report to HHSC an emergency transfer of a patient to a hospital if the transfer occurs by ambulance.

Comment: TNA and TNP noted both §509.65 and the general and special hospital rule at 25 TAC §133.44 require a physician evaluation upon a patient's arrival to the hospital and before any transfer, but §509.65(b)(3) excludes the provisions at 25 TAC §133.44(c)(4) allowing an RN, PA, or other qualified medical personnel to assess and report the patient's condition to the physician for an initial evaluation or in place of an evaluation if the physician determines the evaluation would unnecessarily delay the transfer to the patient's detriment. TNA and TNP recommended amending §509.65(b)(3) to include the provisions in 25 TAC §133.44(c)(4).

Response: HHSC declines to revise §509.65(b)(3) because at least one licensed physician must be on-site at the FEMC facility during all hours of operation as required under §509.24(c)(7) and HSC §254.053(c).

Comment: TMA expressed concern with §509.81 prohibiting a facility from recording, listening to, or eavesdropping on interviews or discussions by HHSC staff and requiring a facility to inform HHSC of any cameras or other recording devices in operation during HHSC staff discussions. TMA noted this could be read as imposing a proactive duty on the facility to respond to HHSC's conduct. TMA proposed language requiring a facility to grant reasonable HHSC staff requests to turn off security cameras or other recording or listening devices during HHSC staff interviews with facility staff or patients or during internal discussions between HHSC staff. TMA also proposed language to require the facility to provide HHSC staff with space in the facility to conduct interviews or discussions without security cameras or other recording or listening devices present.

Response: HHSC revises §509.81 to state an FEMC facility shall not intentionally record, listen to, or eavesdrop on any HHSC internal discussions outside the presence of FEMC facility staff when HHSC has requested a private room or office or distanced themselves from FEMC facility staff. HHSC also revises the language to require the FEMC facility to obtain HHSC staff's written approval before beginning to record or listen to the discussion. HHSC also adds 509.81(c) to state an interview or conversation for which FEMC facility staff are permitted either by words or actions to be present does not constitute a violation of this rule.

Comment: TMA requested HHSC amend §509.82(d), §509.83(g), and §509.83(j) to include the phrase "unless prohibited by law" at the end of the sentence. TMA stated these subsections do not reflect access to certain information as being subject to additional confidentiality by law.

Response: HHSC revises §509.82(d), §509.83(g), and §509.83(j) as requested.

Comment: TMA expressed concern with the timing requirements in §509.83(a), which requires a facility to, at the time of the initial physician assessment, provide each patient and applica-

ble consentor with a written statement identifying HHSC as the agency responsible for investigating complaints against the facility. Specifically, TMA stated requiring the facility to provide the notice "at this specific clinical juncture may be overly prescriptive and could interfere with treatment." TMA recommended removing "at the time of the initial physician assessment" from §509.83(a).

Response: HHSC revises §509.83(a) by changing "at the time of the initial physician assessment" to "upon initial triage."

Comment: TMA recommended HHSC replace the term "consenter" with "legally authorized representative" in §509.83(a) to increase consistency with Texas law and the rest of the proposed rules.

Response: HHSC revises §509.83(a) by replacing the term "consenter" with "legally authorized representative." HHSC also adds a definition for "legally authorized representative" at §509.2(17) and renumbers the rest of §509.2 accordingly.

Comment: TMA stated that the new rules narrow the information HHSC provides to a facility after an inspection or investigation. TMA cited repealed 25 TAC §131.81(e), which requires HHSC to provide the facility with: the specific nature of the inspection or investigation; any alleged violations of a specific statute or rule; the identity of any records that were duplicated; the specific nature of any finding regarding an alleged violation or deficiency; the severity of a deficiency, if a deficiency is alleged; and a statement indicating no deficiencies were found when HHSC does not identify any deficiencies. TMA requested HHSC amend the new rules to require HHSC to provide the same extent of information during the exit conference as required under repealed 25 TAC §131.81(e).

Response: HHSC declines to revise the rules. The rules at §509.82(j) and §509.83(l) require the HHSC representative to hold an exit conference with the facility representative at an inspection's or investigation's conclusion and inform the facility representative of any preliminary inspection or investigation findings, which is consistent with current practice.

Comment: TMA stated §509.84(b)(2) shortens the required timeframe in which a facility must return a plan of correction to HHSC after receiving a statement of deficiencies under §509.84(b)(2). TMA stated the current rule allows for 10 business days and the new rule is 10 calendar days.

Response: HHSC declines to revise §509.84(b)(2). The timeframe in repealed 25 TAC §131.81 refers to "working days," which is unclear because licensed FEMC facilities are required by HSC 254.051(e) to be open 24 hours a day, seven days a week. Therefore, HHSC clarified the timeframes in this chapter by using the more commonly used terms "calendar" and "business" day.

Comment: TMA expressed concern with §509.101(c) not identifying FEMC facility licensees and applicants when listing the acts and omissions that may result in enforcement actions. TMA stated this language suggests broad enforcement authority under the proposed new chapter for HHSC to deny, suspend, or revoke a license or impose an administrative penalty on any person who fails to comply with any law applicable to that person. TMA also noted the chapter does not define the term "license," so the term is not inherently limited to an FEMC facility license. TMA also noted repealed 25 TAC §131.101 uses the terms "licensee or applicant," and requested that HHSC amend

§509.101(c) to include the defined terms "licensee" and "applicant" in the subsection.

Response: HHSC declines to revise §509.101(c) because extra clarification is unnecessary as this chapter governs FEMC facility licenses. Therefore, it is clear §509.101(c) applies only to FEMC facility licensees and applicants for FEMC facility licensure.

Comment: TAFEC expressed its appreciation for §509.101(d) requiring HHSC to provide notice to FEMC facilities before denying, suspending, or revoking a license, or imposing an administrative penalty and providing the FEMC facility the opportunity to request a hearing.

Response: HHSC acknowledges this comment.

Comment: TAFEC requested that HHSC amend §509.108 to retain the administrative penalty limitations in repealed 25 TAC §131.108(c), which limits the total administrative penalty amount assessed for a multi-day violation at \$5,000. TAFEC further recommended HHSC exceed the administrative penalty limitation only after obtaining evidence of "actual serious patient harm." TAFEC noted the potential for penalties to exceed \$5,000 would be an "onerous burden" for FEMC facility operators.

Response: HHSC declines to revise §509.108 because the rule is consistent with HHSC's authority under HSC §254.205 to impose a penalty of up to \$1,000 for each violation. Specifically, HSC §254.205(c) clarifies HHSC may consider each day of a continuing violation as a separate violation for the purposes of imposing an administrative penalty.

HHSC made the following edits to provide clarity, improve readability, and ensure consistency with HHSC rulemaking guidelines.

HHSC amended §509.24(k) to replace "HHSC will withdraw the application" with "HHSC will consider the application to be withdrawn" to increase clarity regarding how an application's status changes if an applicant does not complete all requirements within six months.

HHSC amended §509.83(l) to clarify that HHSC holds an exit conference with a facility representative.

## SUBCHAPTER A. GENERAL PROVISIONS

### 26 TAC §509.1, §509.2

#### STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and HSC §254.101, which authorizes HHSC to adopt rules regarding FEMC facilities.

#### §509.2. Definitions.

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

(1) Act--Texas Health and Safety Code Chapter 254, titled Freestanding Emergency Medical Care Facilities.

(2) Action plan--A written document that includes specific measures to correct identified problems or areas of concern; identifies strategies for implementing system improvements; and includes outcome measures to indicate the effectiveness of system improvements in reducing, controlling, or eliminating identified problem areas.

(3) Administrator--A person who is a physician, is a registered nurse, has a baccalaureate or postgraduate degree in administration or a health-related field, or has one year of administrative experience in a health-care setting.

(4) Advanced practice registered nurse (APRN)--A registered nurse authorized by the Texas Board of Nursing to practice as an advanced practice registered nurse in Texas. The term includes a nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist. The term is synonymous with "advanced nurse practitioner."

(5) Adverse event--An event that results in unintended harm to the patient by an act of commission or omission rather than by the underlying disease or condition of the patient.

(6) Applicant--A person who seeks a freestanding emergency medical care facility license from the Texas Health and Human Services Commission (HHSC) and who is legally responsible for operation of the freestanding emergency medical care facility, whether by lease or ownership.

(7) Certified registered nurse anesthetist (CRNA)--A registered nurse who has current certification from the Council on Certification of Nurse Anesthetists and is currently authorized to practice as an advanced practice registered nurse by the Texas Board of Nursing.

(8) Change of ownership--Change in the person legally responsible for operation of the facility, whether by lease or by ownership.

(9) Designated provider--A provider of health care services selected by a health maintenance organization, a self-insured business corporation, a beneficial society, the Veterans Administration, TRI-CARE, a business corporation, an employee organization, a county, a public hospital, a hospital district, or any other entity to provide health care services to a patient with whom the entity has a contractual, statutory, or regulatory relationship that creates an obligation for the entity to provide the services to the patient.

(10) Disposal--Discharge, deposit, injection, dumping, spilling, leaking, or placing any solid waste or hazardous waste (containerized or uncontainerized) into or on any land or water so that solid waste or hazardous waste, or any constituent thereof, may enter the environment or be emitted into the air or discharge into any waters, including groundwaters.

(11) Emergency care--Health care services provided in a freestanding emergency medical care facility to evaluate and stabilize medical conditions of a recent onset and severity, including severe pain, that would lead a prudent layperson possessing an average knowledge of medicine and health to believe that the person's condition, sickness, or injury is of such a nature that failure to get immediate medical care could result in:

- (A) placing the person's health in serious jeopardy;
- (B) serious impairment to bodily functions;
- (C) serious dysfunction of a bodily organ or part;
- (D) serious disfigurement; or
- (E) in the case of a pregnant woman, serious jeopardy to the health of the woman or fetus.

(12) Facility--A freestanding emergency medical care facility.

(13) Freestanding emergency medical care facility--A facility that is structurally separate and distinct from a hospital and which receives an individual and provides emergency care as defined in this section.

(14) Freestanding emergency medical care facility administration--The administrative body of a freestanding emergency medical care facility headed by an individual who has the authority to represent the facility and who is responsible for operation of the facility according to the policies and procedures of the facility's governing body.

(15) Governing body--The governing authority of a freestanding emergency medical care facility that is responsible for a facility's organization, management, control, and operation, including appointment of the medical staff; and includes the owner or partners for a freestanding emergency medical care facility owned or operated by an individual or partners or corporation.

(16) HHSC--Texas Health and Human Services Commission.

(17) Legally authorized representative (LAR)--Means:

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

(B) a legal guardian if the patient has been adjudicated incapacitated to manage the patient's personal affairs;

(C) an agent of the patient authorized under a medical power of attorney;

(D) an attorney ad litem appointed for the patient;

(E) a person authorized to consent to medical treatment on behalf of the patient under Texas Health and Safety Code Chapter 313;

(F) a guardian ad litem appointed for the patient;

(G) a personal representative or heir of the patient, as defined by Texas Estates Code Chapter 22, if the patient is deceased;

(H) an attorney retained by the patient or by the patient's legally authorized representative; or

(I) a person exercising a power granted to the person in the person's capacity as an attorney-in-fact or agent of the patient by a statutory durable power of attorney that is signed by the patient as principal.

(18) Licensed vocational nurse (LVN)--A person who is currently licensed by the Texas Board of Nursing as a licensed vocational nurse.

(19) Licensee--The person or governmental unit named in the application for issuance of a facility license.

(20) Medical director--A physician who is board certified or board eligible in emergency medicine, or board certified in primary care with a minimum of two years of emergency care experience.

(21) Medical staff--A physician or group of physicians, podiatrist or group of podiatrists, and dentist or group of dentists who by action of the governing body of a facility are privileged to work in and use the facility.

(22) Owner--One of the following persons or governmental unit that will hold, or does hold, a license issued under the Act in the person's name or the person's assumed name:

(A) a corporation;

(B) a governmental unit;

(C) a limited liability company;

(D) an individual;

(E) a partnership, if a partnership name is stated in a written partnership agreement, or an assumed name certificate;

(F) all partners in a partnership if a partnership name is not stated in a written partnership agreement, or an assumed name certificate; or

(G) all co-owners under any other business arrangement.

(23) Patient--An individual who presents for diagnosis or treatment.

(24) Person--An individual, firm, partnership, corporation, association, or joint stock company, including a receiver, trustee, assignee, or other similar representative of such an entity.

(25) Physician--An individual licensed by the Texas Medical Board and authorized to practice medicine in the state of Texas.

(26) Physician assistant--An individual licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners.

(27) Practitioner--A health care professional licensed in the state of Texas, other than a physician, podiatrist, or dentist. A practitioner shall practice in a manner consistent with their underlying practice act.

(28) Prelicensure conference--A conference held between HHSC staff and the applicant or the applicant's representative to review licensure rules and survey documents and provide consultation before the on-site licensure inspection.

(29) Premises--A building where patients receive emergency services from a freestanding emergency medical care facility.

(30) Quality assessment and performance improvement (QAPI)--An ongoing program that measures, analyzes, and tracks quality indicators related to improving health outcomes and patient care emphasizing a multidisciplinary approach. The program implements improvement plans and evaluates the implementation until resolution is achieved.

(31) Registered nurse (RN)--An individual who is currently licensed by the Texas Board of Nursing as a registered nurse.

(32) Sexual assault survivor--An individual who is a victim of a sexual assault, regardless of whether a report is made, or a conviction is obtained in the incident.

(33) Stabilize--To provide necessary medical treatment of an emergency medical condition to ensure, within reasonable medical probability, that the condition is not likely to deteriorate materially from or during the transfer of the individual from a facility.

(34) Transfer--Movement (including the discharge) of an individual outside a facility at the direction of and after personal examination and evaluation by the facility physician. Transfer does not include movement outside a facility of an individual who has been declared dead or who leaves the facility against the advice of a physician.

(35) Transfer agreement--A referral, transmission, or admission agreement with a hospital.

(36) Universal precautions--Procedures for disinfecting and sterilizing reusable medical devices and appropriate use of infection control, including hand washing, use of protective barriers, and use and disposal of needles and other sharp instruments, as those procedures are defined by the Centers for Disease Control and Prevention (CDC) of the United States Department of Health and Human Services. This term includes standard precautions as defined by CDC, which are designed to reduce the risk of transmission of bloodborne and other pathogens in healthcare facilities.



(37) Violation--Failure to comply with the Act, another statute relating to the licensure or operation of a freestanding emergency medical care facility, a rule or standard, or an order issued by the executive commissioner of HHSC or the executive commissioner's designee, adopted or enforced under the Act.

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

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For further information, please call: (512) 834-4591



## SUBCHAPTER B. LICENSING REQUIREMENTS

### 26 TAC §§509.21 - 509.30

#### STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and HSC §254.101, which authorizes HHSC to adopt rules regarding FEMC facilities.

#### *§509.24. Application and Issuance of Initial License.*

(a) All first-time applications for licensing are applications for an initial license, including applications from unlicensed operational facilities and licensed facilities for which a change of ownership or relocation is anticipated.

(b) The applicant shall submit the completed application, the information required in subsection (d) of this section, and the nonrefundable license fee to the Texas Health and Human Services Commission (HHSC) 90 days before the projected opening date of the facility.

(c) The applicant shall disclose to HHSC, if applicable:

(1) the name, address, and social security number of the owner or sole proprietor, if the owner of the facility is a sole proprietor;

(2) the name, address, and social security number of each general partner who is an individual, if the facility is a partnership;

(3) the name, address, and social security number of any individual who has an ownership interest of more than 25 percent in the corporation, if the facility is a corporation;

(4) the name, medical license number, and medical license expiration date of any physician licensed by the Texas Medical Board who has a financial interest in the facility or in any entity that has an ownership interest in the facility;

(5) the name, medical license number, and medical license expiration date of the medical chief of staff;

(6) the name, nursing license number, and nursing license expiration date of the director of nursing;

(7) affirmation that at least one physician licensed in the state of Texas and at least one registered nurse licensed in the state of Texas will be on site during all hours of operation;

(8) information concerning the applicant and the applicant's affiliates and managers, as applicable:

(A) denial, suspension, probation, or revocation of a facility license in any state or any other enforcement action, such as court civil or criminal action in any state;

(B) surrendering a license before expiration of the license or allowing a license to expire in lieu of HHSC proceeding with enforcement action;

(C) federal or state (any state) criminal felony arrests or convictions;

(D) Medicare or Medicaid sanctions or penalties relating to operation of a health care facility or home and community support services agency;

(E) operation of a health care facility or home and community support services agency that has been decertified or terminated from participation in any state under Medicare or Medicaid; or

(F) debarment, exclusion, or contract cancellation in any state from Medicare or Medicaid;

(9) for the two-year period preceding the application date, information concerning the applicant and the applicant's affiliates and managers, as applicable:

(A) federal or state (any state) criminal misdemeanor arrests or convictions;

(B) federal, state (any state), or local tax liens;

(C) unsatisfied final judgments;

(D) eviction involving any property or space used as a health care facility in any state;

(E) injunctive orders from any court; or

(F) unresolved final federal or state (any state) Medicare or Medicaid audit exceptions;

(10) the number of emergency treatment stations;

(11) a copy of the facility's patient transfer policy and procedure for the immediate transfer to a hospital of patients requiring emergency care beyond the capabilities of the facility developed in accordance with §509.65 of this chapter (relating to Patient Transfer Policy) and signed by the chairman and the secretary of the governing body that attests the date the policy was adopted by the governing body and its effective date;

(12) a copy of the facility's memorandum of transfer form, which contains at a minimum the information described in §509.65 of this chapter;

(13) a copy of a written agreement the facility has with a hospital, which provides for the prompt transfer to and the admission by the hospital of any patient when services are needed but are unavailable or beyond the capabilities of the facility in accordance with §509.66 of this chapter (relating to Patient Transfer Agreements); and

(14) a copy of a passing fire inspection report indicating approval by the local fire authority in whose jurisdiction the facility is based that is dated no earlier than one year before the opening date of the facility.

(d) The address provided on the application shall be the physical location at which the facility is or will be operating.

(e) Upon receipt of the application, HHSC shall review the application to determine whether it is complete. If HHSC determines that the application is not complete, HHSC shall notify the facility in writing.

(f) The applicant or the applicant's representative shall attend a preclosure conference at the office designated by HHSC. HHSC may waive the preclosure conference requirement.

(g) After the facility has participated in a preclosure conference or the preclosure conference has been waived at HHSC's discretion, the facility has received an approved architectural inspection conducted by HHSC, and HHSC has determined the facility is in compliance with subsections (c) - (e) of this section, HHSC shall issue a license to the facility to provide freestanding emergency medical care services in accordance with this chapter.

(h) The license shall be effective on the date the facility is determined to be in compliance with subsections (c) - (g) of this section.

(i) The license expires on the last day of the 24th month after issuance.

(j) If an applicant decides not to continue the application process for a license, the applicant may withdraw its application. The applicant shall submit to HHSC a written request to withdraw. HHSC shall acknowledge receipt of the request to withdraw.

(k) If the applicant does not complete all requirements of subsections (b) - (d) and (f) of this section within six months after the date HHSC's health care facility licensing unit receives confirmation that HHSC received the application and payment, HHSC will consider the application to be withdrawn. Any fee paid for a withdrawn application is nonrefundable, as indicated by §509.30(d) of this subchapter (relating to Fees).

(l) During the initial licensing period, HHSC shall conduct an inspection of the facility to ascertain compliance with the provisions of the Act and this chapter.

(1) The facility shall request HHSC conduct an on-site inspection after the facility provides services to at least one patient.

(2) The facility shall be providing services at the time of the inspection.

#### §509.26. *Inactive Status and Closure.*

(a) A facility that is not staffed and open for more than five calendar days shall inform the Texas Health and Human Services Commission (HHSC), and HHSC will change the status of the facility license to inactive.

(1) To be eligible for inactive status, a facility must be in good standing with no pending enforcement action or investigation.

(2) The licensee is responsible for any license renewal requirements or fees, and for proper maintenance of patient records, while the license is inactive.

(3) A license may not remain inactive for more than 60 calendar days.

(4) To reactivate the license, the facility must inform HHSC no later than 60 calendar days after the facility stopped providing services under its license.

(5) A facility that does not reactivate its license by the 60th calendar day after it stopped providing services has constructively surrendered its license, and HHSC will consider the facility closed.

(b) A facility shall notify HHSC in writing before closure of the facility.

(1) The facility shall dispose of medical records in accordance with §509.54 of this chapter (relating to Medical Records).

(2) The facility shall appropriately discharge or transfer all patients before the facility closes.

(3) A license becomes invalid when a facility closes. The facility shall return the licensure certificate to HHSC not later than 30 calendar days after the facility closes.

(c) A facility that closes, or for which a license issued under this chapter expires or is suspended or revoked, shall immediately remove or cause to be removed any signs within view of the general public indicating that the facility is in operation as required under Texas Health and Safety Code §254.158 (relating to Removal of Signs).

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

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## SUBCHAPTER C. OPERATIONAL REQUIREMENTS

### 26 TAC §§509.41 - 509.66

#### STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and HSC §254.101, which authorizes HHSC to adopt rules regarding FEMC facilities.

#### §509.48. *Anesthesia.*

(a) If a facility furnishes anesthesia services, the facility shall provide these services in a well-organized manner under the medical direction of a physician approved by the governing body and qualified in accordance with Texas Occupations Code Title 3, Subtitle B (relating to Physicians) and Texas Occupations Code Chapter 301 (relating to Nurses), as appropriate.

(b) A facility that furnishes anesthesia services shall comply with Texas Occupations Code Chapter 162, Subchapter C (relating to Anesthesia in Outpatient Setting), unless the facility is exempt under Texas Occupations Code §162.103 (relating to Applicability).

(c) A facility is responsible for and shall document all anesthesia services administered in the facility.

(d) Anesthesia services provided in the facility shall be limited to those that are recommended by the medical staff and approved by the governing body, which may include the following.

(1) Topical anesthesia--An anesthetic agent applied directly or by spray to the skin or mucous membranes, intended to produce transient and reversible loss of sensation to the circumscribed area.

(2) Local anesthesia--Administering an agent that produces a transient and reversible loss of sensation to a circumscribed portion of the body.

(3) Regional anesthesia--Anesthetic injected around a single nerve, a network of nerves, or vein that serves the area involved in a surgical procedure to block pain.

(4) Minimal sedation (anxiolysis)--A drug-induced state during which patients respond normally to oral commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are unaffected.

(5) Moderate sedation or analgesia ("conscious sedation")--A drug-induced depression of consciousness during which patients respond purposefully to oral commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. (Reflex withdrawal from a painful stimulus is not considered a purposeful response.)

(6) Deep sedation or analgesia--A drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained. (Reflex withdrawal from a painful stimulus is not considered a purposeful response.)

(e) The medical staff shall develop written policies and practice guidelines for the anesthesia service, which the governing body shall adopt, implement, and enforce. The policies and guidelines shall include consideration of the applicable practice standards and guidelines of the American Society of Anesthesiologists, the American Association of Nurse Anesthetists, and the licensing rules and standards applicable to those categories of licensed professionals qualified to administer anesthesia.

(f) Only personnel who have been approved by the facility to provide anesthesia services shall administer anesthesia. All approvals or delegations of anesthesia services as authorized by law shall be documented and include the training, experience, and qualifications of the person who provided the service. On the order of a physician, podiatrist, dentist, or other practitioner practicing within the scope of their license and education, a qualified registered nurse (RN) who is not a certified registered nurse anesthetist (CRNA) may administer topical anesthesia, local anesthesia, minimal sedation and moderate sedation, in accordance with all applicable rules, policies, directives, and guidelines issued by the Texas Board of Nursing. When an RN who is not a CRNA administers sedation, as permitted in this paragraph, the facility shall:

- (1) verify the RN has the requisite training, education, and experience;
- (2) maintain documentation to support that the RN has demonstrated competency in administering sedation;
- (3) with input from the facility's qualified anesthesia providers, develop, implement, and enforce detailed written policies and procedures to guide the RN; and
- (4) ensure that, when administering sedation during a procedure, the RN has no other duties except to monitor the patient.

(g) Anesthesia shall not be administered unless the physician has evaluated the patient immediately before the procedure to assess the risk of the anesthesia and of the procedure to be performed.

(h) A patient who has received anesthesia shall be evaluated for proper anesthesia recovery by the physician, or the person administering the anesthesia, before discharge using criteria approved by the medical staff.

(i) A patient shall be evaluated immediately before leaving the facility by a physician, the person administering the anesthesia, or an RN acting in accordance with physician's orders and written policies, procedures, and criteria developed by the medical staff.

(j) Emergency equipment and supplies appropriate for the type of anesthesia services provided shall always be maintained and accessible to staff.

(k) All facilities shall provide at least the following functioning equipment and supplies:

- (1) suctioning equipment, including a source of suction and suction catheters in appropriate sizes for the population being served;
- (2) a source of compressed oxygen;
- (3) basic airway management equipment, including oral and nasal airways, face masks, and self-inflating breathing bag valve set;
- (4) blood pressure monitoring equipment; and
- (5) emergency medications specified by the medical staff and appropriate to the type of procedures and anesthesia services provided by the facility.

(l) In addition to the equipment and supplies required under subsection (k) of this section, a facility that provides moderate sedation/analgesia, deep sedation/analgesia, or regional analgesia shall provide:

- (1) intravenous equipment, including catheters, tubing, fluids, dressing supplies, and appropriately sized needles and syringes;
- (2) advanced airway management equipment, including laryngoscopes and an assortment of blades, endotracheal tubes, and stylets in appropriate sizes for the population being served;
- (3) a mechanism for monitoring blood oxygenation, such as pulse oximetry;
- (4) electrocardiographic monitoring equipment;
- (5) cardiac defibrillator; and
- (6) pharmacologic antagonists, as specified by the medical staff and appropriate to the type of anesthesia services provided.

§509.51. *Radiology.*

(a) The facility shall adopt, implement, and enforce policies and procedures for emergency radiological procedures.

(b) The facility shall provide radiological services that are immediately available on the premises to meet the emergency needs of patients and to adequately support the facility's clinical capabilities, including plain film X-ray.

(c) The facility shall provide computed tomography (CT) scan services and ultrasound services that are immediately available on the premises.

(d) A physician or other practitioner within the scope of their license and education shall read, date, sign, and authenticate all examination reports.

(e) The radiology department shall meet all applicable federal, state, and local laws, codes, standards, rules, regulations, and ordinances.

(f) Procedure manuals shall include procedures for all examinations performed, infection control in the facility, treatment and examination rooms, personnel dress code, and equipment cleaning.

(g) Policies shall address the quality aspects of radiology services, including:

(1) performing radiology services only on the written order of a physician, podiatrist, dentist, or other practitioner, who is practicing within the scope of their license and education, (such orders shall be accompanied by a concise statement of the reason for the examination); and

(2) limiting the use of any radioactive sources in the facility to physicians who have been granted privileges for such use based on their training, experience, and current competence.

(h) Policies shall address safety, including:

(1) regulating use, removal, handling, and storage of any radioactive material that is required to be licensed by the Texas Department of State Health Services Radiation Control Program;

(2) precautions against electrical, mechanical, and radiation hazards;

(3) proper shielding where radiation sources are used;

(4) acceptable monitoring devices for all personnel who might be exposed to radiation that shall be worn by such personnel in any area with a radiation hazard;

(5) maintenance of radiation exposure records on personnel; and

(6) authenticated dated reports of all examinations performed added to the patient's medical record.

#### §509.52. *Respiratory Services.*

(a) The facility shall meet the respiratory needs of the patients in accordance with acceptable standards of practice.

(b) The facility shall adopt, implement, and enforce policies and procedures that describe the provision of respiratory care services in the facility.

(c) The organization of the respiratory care services shall be appropriate to the scope and complexity of the services offered.

(d) Personnel qualified to perform specific procedures and the amount of supervision required for personnel to carry out specific procedures shall be designated in writing.

(e) If blood gases or other clinical laboratory tests are performed, staff shall comply with Clinical Laboratory Improvement Amendments of 1988 in accordance with the requirements specified in Code of Federal Regulations, Title 42, Part 493 (relating to Laboratory Services).

(f) Respiratory services shall be provided only on, and in accordance with, the orders of a physician, or other practitioner practicing within the scope of their license.

#### §509.53. *Surgical Services within the Scope of the Practice of Emergency Medicine.*

(a) Surgical procedures performed in the facility shall be limited to those emergency procedures that are approved by the governing body on the recommendation of medical staff.

(b) Adequate supervision of surgical procedures conducted in the facility shall be a responsibility of the governing body, recommended by medical staff, and provided by appropriate medical staff.

(c) Surgical procedures shall be performed only by physicians, podiatrists, dentists, or other practitioners, who are practicing within the scope of their license and education, who are licensed to perform surgical procedures in Texas and who have been granted privileges to perform those procedures by the governing body, on the recommendation of the medical staff, and after medical review of the physician's, podiatrist's, dentist's, or practitioner's documented education, training, experience, and current competence.

(d) Surgical procedures to be performed in the facility shall be reviewed periodically as part of the peer review portion of the facility's quality assessment and performance improvement program.

(e) An appropriate history, physical examination, and pertinent preoperative diagnostic studies shall be incorporated into the patient's medical record before a surgical procedure.

(f) Unless otherwise provided by law, the necessity or appropriateness of the proposed surgical procedure, as well as any available alternative treatment techniques, shall be discussed with the patient, or if applicable, with the patient's legal representative before the surgical procedure.

(g) Licensed nurses and other personnel assisting in the provision of surgical services shall be appropriately trained and supervised and available in sufficient numbers for the surgical care provided.

(h) Each treatment or examination room shall be designed and equipped so that the types of surgical procedures conducted can be performed in a manner that protects the lives and ensures the physical safety of all persons in the area.

(1) If flammable agents are present in a treatment or examination room, the room shall be constructed and equipped in compliance with standards established by the National Fire Protection Association (NFPA 99, Annex 2, Flammable Anesthetizing Locations, 1999) and with applicable state and local fire codes.

(2) If nonflammable agents are present in a treatment or examination room, the room shall be constructed and equipped in compliance with standards established by the National Fire Protection Association (NFPA 99, Chapters 4 and 8, 1999) and with applicable state and local fire codes.

(i) With the exception of those tissues exempted by the governing body after medical review, tissues removed shall be examined by a pathologist, whose signed or authenticated report of the examination shall be made a part of the patient's medical record.

(j) A description of the findings and techniques of surgical procedures shall be accurately and completely incorporated into the patient's medical record immediately after the procedure by the physician, podiatrist, dentist, or other practitioner, acting within the scope of their license and education, who performed the procedure. If the description is dictated, an accurate written summary shall be immediately available to the physicians and practitioners providing patient care and shall become a part of the patient's medical record.

(k) The facility shall provide adequate space, equipment, and personnel to ensure a safe environment for treating patients during surgical procedures, including adequate safeguards to protect the patient from cross infection.

(1) The facility shall isolate patients with communicable diseases.

(2) Acceptable aseptic techniques shall be used by all persons.

(3) Suitable equipment for rapid and routine sterilization shall be available.

(4) The facility shall implement environmental controls that ensure a safe and sanitary environment.

(l) Written policies and procedures for decontaminating, disinfecting, sterilizing, and storing sterile supplies shall be adopted, implemented, and enforced as described in §509.57 of this subchapter (relating to Sterilization).

(m) Emergency power adequate for the type of surgical procedures performed shall be available.

(n) Periodic calibration and preventive maintenance of all equipment shall be provided in accordance with manufacturer's guidelines.

(o) Unless otherwise provided by law, the informed consent of the patient or, if applicable, of the patient's legal representative shall be obtained before a surgical procedure is performed.

(p) The facility shall establish a written procedure for observing and caring for the patient during and after surgical procedures.

(q) The facility shall establish written protocols for instructing patients in self-care after surgical procedures, including written instructions to be given to patients who receive conscious sedation or regional anesthesia.

(r) Patients who have received anesthesia, other than solely topical anesthesia, shall be allowed to leave the facility only in the company of a responsible adult, unless the physician, physician assistant, or an advanced practice registered nurse writes an order that the patient may leave without the company of a responsible adult.

(s) The facility shall develop an effective written procedure for the immediately transferring to a hospital patients requiring emergency care beyond the capabilities of the facility. The facility shall have a written transfer agreement with a hospital as set forth in §509.65 of this subchapter (relating to Patient Transfer Policy).

#### §509.54. Medical Records.

(a) The facility shall develop and maintain a system for collecting, processing, maintaining, storing, retrieving, authenticating, and distributing patient medical records.

(b) The facility shall establish an individual medical record for each patient.

(c) All clinical information relevant to a patient shall be readily available to physicians or practitioners involved in the care of that patient.

(d) Except when otherwise required or permitted by law, any record that contains clinical, social, financial, or other data on a patient shall be strictly confidential and shall be protected from loss, tampering, alteration, improper destruction, and unauthorized or inadvertent disclosure.

(e) The facility shall designate a person to be in charge of medical records. The person's responsibilities include:

- (1) confidential, secure, and safe storage of medical records;
- (2) timely retrieval of individual medical records on request;
- (3) specific identification of each patient's medical record;

(4) supervision of collecting, processing, maintaining, storing, retrieving, and distributing medical records; and

(5) maintenance of a predetermined organized medical record format.

(f) The facility shall retain medical records in their original or legally reproduced form for a period of at least 10 years. A legally reproduced form is a medical record retained in hard copy, microform (microfilm or microfiche), or electronic medium. The facility shall retain films, scans, and other image records for a period of at least five years.

(1) The facility shall not destroy medical records that relate to any matter that is involved in litigation if the facility knows the litigation has not been finally resolved.

(2) For medical records of a patient less than 18 years of age at the time of last treatment, the facility may dispose of those medical records after the date of the patient's 20th birthday or after the 10th anniversary of the date on which the patient was last treated, whichever date is later, unless the records are related to a matter that is involved in litigation that the facility knows has not been finally resolved.

(3) If a facility plans to close, the facility shall arrange for disposition of the medical records in accordance with applicable law. The facility shall notify the Texas Health and Human Services Commission at the time of closure of the disposition of the medical records, including where the medical records will be stored and the name, address, and phone number of the custodian of the records.

(g) Except when otherwise required by law, the content and format of medical records, including the sequence of information, shall be uniform.

(h) Medical records shall be available to authorized physicians and practitioners any time the facility is open to patients.

(i) The facility shall include in patients' medical records:

- (1) complete patient identification;
- (2) date, time, and means of arrival and discharge;
- (3) allergies and untoward reactions to drugs recorded in a prominent and uniform location;
- (4) all medications administered and the drug dose, route of administration, frequency of administration, and quantity of all drugs administered or dispensed to the patient by the facility and entered on the patient's medical record;
- (5) significant medical history of illness and results of physical examination, including the patient's vital signs;
- (6) a description of any care given to the patient before the patient's arrival at the facility;
- (7) a complete detailed description of treatment and procedures performed in the facility;
- (8) clinical observations including the results of treatment, procedures, and tests;
- (9) diagnostic impression;
- (10) a pre-anesthesia evaluation by an individual qualified to administer anesthesia when administered;
- (11) a pathology report on all tissues removed, except those exempted by the governing body;
- (12) documentation of a properly executed informed consent when necessary;

(13) for patients with a length of stay greater than eight hours, an evaluation of nutritional needs and evidence of how identified needs were met;

(14) evidence of patient evaluation by a physician, physician assistant, or advanced practice registered nurse before dismissal; and

(15) conclusion at the termination of evaluation or treatment, including final disposition, the patient's condition on discharge or transfer, and any instructions given to the patient or family for follow-up care.

(j) Medical advice given to a patient by telephone shall be entered in the patient's medical record and dated, timed, and authenticated.

(k) Entries in medical records shall be legible, accurate, complete, dated, timed, and authenticated by the person responsible for providing or evaluating the service provided no later than 48 hours after discharge.

(l) To ensure continuity of care, medical records shall be transferred to the physician, practitioner, or facility to whom the patient was referred, if applicable.

*§509.61. Abuse and Neglect.*

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

(1) Abuse--The negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment, including pain or sexual abuse, that adversely affects the physical, mental, or emotional welfare of a patient.

(2) Exploitation--The use of a patient's resources for monetary or personal benefit, profit, or gain without the informed consent of the patient.

(3) Illegal conduct--Conduct prohibited by law.

(4) Neglect--The failure to provide goods or services that are necessary to avoid adversely affecting the physical, mental, or emotional welfare of a patient.

(5) Unethical conduct--Conduct prohibited by the ethical standards adopted by state or national professional organizations for their respective professions or by rules established by the state licensing agency for the respective profession.

(6) Unprofessional conduct--Conduct prohibited under rules adopted by the state licensing agency for the respective profession.

(b) The facility or a person associated with a facility, including an employee, volunteer, health care professional, or other person, shall immediately report all incidents of abuse, neglect, or exploitation to the Texas Health and Human Services Commission (HHSC) and any other appropriate regulatory agency. This includes any information that would reasonably cause a person to believe that an incident of abuse, neglect, or exploitation has occurred, is occurring, or will occur.

(c) A person associated with a facility, including an employee, volunteer, health care professional, or other person, who reasonably believes or knows of information that would reasonably cause a person to believe the facility, a facility employee, or a health care professional associated with the facility, has, is, or will be engaged in conduct that is or might be illegal, unprofessional, or unethical and that relates to the operation of the facility shall report the information as soon as possible to HHSC or to the appropriate state health care regulatory agency.

(d) A facility shall prominently and conspicuously post for display a statement of the duty to report abuse, neglect, exploitation, illegal conduct, unethical conduct, or unprofessional conduct.

(1) The display shall be posted in a public area of the facility and shall be readily visible to patients, residents, volunteers, employees, and visitors.

(2) The statement shall be in English and in a second language as appropriate to the demographic makeup of the community served.

(3) The statement shall contain the contact information for HHSC Complaint and Incident Intake.

*§509.62. Reporting Requirements.*

(a) A facility shall report the following incidents to the Texas Health and Human Services Commission (HHSC):

(1) the death of a patient while under the care of the facility;

(2) a patient stay exceeding 23 hours; and

(3) 9-1-1 activation or the emergency transfer of a patient from the facility to a hospital by ambulance.

(b) Reports under subsection (a) of this section shall be on a form provided by HHSC. The report shall contain a written explanation of the incident and the name of the individual responsible. The report shall be submitted online or through a telephone call to HHSC Complaint and Incident Intake not later than the 10th business day after the incident.

(c) A facility shall report any abuse, theft, or diversion of controlled drugs in accordance with applicable federal and state laws and shall report the incident to the chief executive officer of the facility.

(d) A facility shall report occurrences of fires in the facility as specified under 25 TAC Chapter 131, Subchapter F (relating to Fire Prevention Safety 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.

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

TRD-202304236

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: December 4, 2023

Proposal publication date: July 14, 2023

For further information, please call: (512) 834-4591



## SUBCHAPTER D. INSPECTION AND INVESTIGATION PROCEDURES

### 26 TAC §§509.81 - 509.86

#### STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and HSC §254.101, which authorizes HHSC to adopt rules regarding FEMC facilities.

§509.81. *Integrity of Inspections and Investigations.*

(a) In order to preserve the integrity of the Texas Health and Human Services Commission's (HHSC's) inspection and investigation process, a facility:

(1) shall not record, listen to, or eavesdrop on any HHSC interview with facility staff or patients that the facility staff knows HHSC intends to keep confidential as evidenced by HHSC taking reasonable measures to prevent from being overheard; or

(2) shall not record, listen to, or eavesdrop on any HHSC internal discussions outside the presence of facility staff when HHSC has requested a private room or office or distanced themselves from facility staff and the facility obtains HHSC' written approval before beginning to record or listen to the discussion.

(b) A facility shall inform HHSC when security cameras or other existing recording devices in the facility are in operation during any internal discussion by or among HHSC staff.

(c) When HHSC by words or actions permits facility staff to be present, an interview or conversation for which facility staff are present does not constitute a violation of this rule.

(d) This section does not prohibit an individual from recording an HHSC interview with the individual.

§509.82. *Inspections.*

(a) The Texas Health and Human Services Commission (HHSC) may conduct an unannounced, on-site inspection of a facility at any reasonable time, including when treatment services are provided, to inspect, investigate, or evaluate compliance with or prevent a violation of:

- (1) any applicable statute or rule;
- (2) a facility's plan of correction;
- (3) an order or special order of the executive commissioner or the executive commissioner's designee;
- (4) a court order granting injunctive relief; or
- (5) for other purposes relating to regulation of the facility.

(b) An applicant or licensee, by applying for or holding a license, consents to entry and inspection of any of its facilities by HHSC.

(c) HHSC inspections to evaluate a facility's compliance may include:

- (1) initial, change of ownership, or relocation inspections for the issuance of a new license;
- (2) inspections related to changes in status, such as new construction or changes in services, designs, or bed numbers;
- (3) routine inspections, which may be conducted without notice and at HHSC's discretion, or prior to renewal;
- (4) follow-up on-site inspections, conducted to evaluate implementation of a plan of correction for previously cited deficiencies;
- (5) inspections to determine if an unlicensed facility is offering or providing, or purporting to offer or provide, treatment; and
- (6) entry in conjunction with any other federal, state, or local agency's entry.

(d) A facility shall cooperate with any HHSC inspection and shall permit HHSC to examine the facility's grounds, buildings, books, records, and other documents and information maintained by or on behalf of the facility, unless prohibited by law.

(e) A facility shall permit HHSC access to interview members of the governing body, personnel, and patients, including the opportunity to request a written statement.

(f) A facility shall permit HHSC to inspect and copy any requested information, unless prohibited by law. If it is necessary for HHSC to remove documents or other records from the facility, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(g) HHSC shall maintain the confidentiality of facility records as applicable under state and federal law.

(h) Upon entry, HHSC holds an entrance conference with the facility's designated representative to explain the nature, scope, and estimated duration of the inspection.

(i) During the inspection, the HHSC representative gives the facility representative an opportunity to submit information and evidence relevant to matters of compliance being evaluated.

(j) When an inspection is complete, the HHSC representative holds an exit conference with the facility representative to inform the facility representative of any preliminary findings of the inspection, including possible health and safety concerns. The facility may provide any final documentation regarding compliance during the exit conference.

§509.83. *Complaint Investigations.*

(a) Upon initial triage, a facility shall provide each patient and applicable legally authorized representative with a written statement identifying the Texas Health and Human Services Commission (HHSC) as the agency responsible for investigating complaints against the facility.

(1) The statement shall inform persons that they may direct a complaint to HHSC Complaint and Incident Intake (CII) and include current CII contact information, as specified by HHSC.

(2) The facility shall prominently and conspicuously post this statement in patient common areas and in visitor's areas and waiting rooms so that it is readily visible to patients, employees, and visitors. The information shall be in English and in a second language appropriate to the demographic makeup of the community served.

(b) HHSC evaluates all complaints. A complaint must be submitted using HHSC's current CII contact information for that purpose, as described in subsection (a) of this section.

(c) HHSC documents, evaluates, and prioritizes complaints based on the seriousness of the alleged violation and the level of risk to patients, personnel, and the public.

(1) Allegations determined to be within HHSC's regulatory jurisdiction relating to freestanding emergency medical care facilities may be investigated under this chapter.

(2) HHSC may refer complaints outside HHSC's jurisdiction to an appropriate agency, as applicable.

(d) HHSC shall conduct investigations to evaluate a facility's compliance following a complaint of abuse, neglect, or exploitation; or a complaint related to the health and safety of patients.

(e) HHSC may conduct an unannounced, on-site investigation of a facility at any reasonable time, including when treatment services are provided, to inspect or investigate:

- (1) a facility's compliance with any applicable statute or rule;

- (2) a facility's plan of correction;
  - (3) a facility's compliance with an order of the executive commissioner or the executive commissioner's designee;
  - (4) a facility's compliance with a court order granting injunctive relief; or
  - (5) for other purposes relating to regulation of the facility.
- (f) An applicant or licensee, by applying for or holding a license, consents to entry and investigation of any of its facilities by HHSC.

(g) A facility shall cooperate with any HHSC investigation and shall permit HHSC to examine the facility's grounds, buildings, books, records, and other documents and information maintained by, or on behalf of, the facility, unless prohibited by law.

(h) A facility shall permit HHSC access to interview members of the governing body, personnel, and patients, including the opportunity to request a written statement.

(i) HHSC shall maintain the confidentiality of facility records as applicable under state and federal law.

(j) A facility shall permit HHSC to inspect and copy any requested information, unless prohibited by law. If it is necessary for HHSC to remove documents or other records from the facility, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(k) Upon entry, the HHSC representative holds an entrance conference with the facility's designated representative to explain the nature, scope, and estimated duration of the investigation.

(l) The HHSC representative holds an exit conference with the facility representative to inform the facility representative of any preliminary findings of the investigation. The facility may provide any final documentation regarding compliance during the exit conference.

(m) Once an investigation is complete, HHSC reviews the evidence from the investigation to evaluate whether there is a preponderance of evidence supporting the allegations contained in the complaint.

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

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

TRD-202304238  
 Karen Ray  
 Chief Counsel  
 Health and Human Services Commission  
 Effective date: December 4, 2023  
 Proposal publication date: July 14, 2023  
 For further information, please call: (512) 834-4591



## SUBCHAPTER E. ENFORCEMENT

### 26 TAC §§509.101 - 509.108

#### STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner

of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and HSC §254.101, which authorizes HHSC to adopt rules regarding FEMC facilities.

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

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

TRD-202304240  
 Karen Ray  
 Chief Counsel  
 Health and Human Services Commission  
 Effective date: December 4, 2023  
 Proposal publication date: July 14, 2023  
 For further information, please call: (512) 834-4591



## CHAPTER 555. NURSING FACILITY ADMINISTRATORS

The Texas Health and Human Services Commission (HHSC) adopts amendments to §555.2, concerning Definitions, §555.11, concerning Application Requirements, §555.12, concerning Licensure Requirements, §555.13, concerning Internship Requirements, §555.18, concerning Examinations and Requirements to Take the Examinations, §555.32, concerning Provisional License, and §555.35, concerning Continuing Education Requirements for License Renewal. The sections are adopted without changes to the proposed text as published in the September 8, 2023, issue of the *Texas Register* (48 TexReg 4988). These rules will not be republished.

### BACKGROUND AND JUSTIFICATION

The amended rules clarify requirements and provide additional options for individuals to qualify for nursing facility administrator (NFA) licensure. The amendments update definitions and associated references for consistency with changes made by the National Association of Long-Term Care Administrator Boards (NAB) regarding both educational domains for testing and the company conducting the NAB examination. The amended rules also provide a greater degree of flexibility for the administrator-in-training (AIT) internship. Other non-substantive changes are for clarification.

The amendment to Subchapter A, General Information, §555.2 revises definitions for NFA rules, including the names and number of educational domains used by NAB, and to clarify that HHSC is responsible for NFA licensure in Texas and that NAB is the national authority on NFA licensure, credentialing, and regulation. Further, the amended rule removes extraneous language from the definition of the NFA advisory committee and updates the name of the company that administers the NAB licensure exam.

The amendments to Subchapter B, Requirements for Licensure, §§555.11, 555.12, 555.13, and 555.18 revises requirements for NFA licensure applications, offering additional options for licensure requirements, and providing increased flexibility for the AIT internship. The revised requirements for licensure applications include reducing the number of academic credits required for NFA candidates who hold a transcript with coursework in the



updated NAB domains that is not reflected by the candidates' baccalaureate degree.

The additional option for individuals to qualify for NFA licensure requires the candidate to hold a baccalaureate degree with coursework in the NAB domains and have one year of experience as the administrator of record or assistant administration of record at a facility in another state. Increased flexibility for the AIT internship includes allowing the internship to be completed in a facility of any size, removing the requirement for the internship to be completed in a facility with a minimum of 60 beds. The amendment to §555.18 makes a minor editorial change and removes a reference to the name of the company that administers the NAB examination.

The amendment to Subchapter C, Licenses, §555.32 and §555.35 clarifies requirements for provisional NFA licenses, removing ambiguous phrases such as "substantially similar" in the context of licensing requirements in other states. The amended rules stipulate that if internship hours in another state do not meet the requirements in §555.13, the provisional licensee must complete the required internship hours under the supervision of an HHSC-licensed preceptor. The amended rules also make non-substantive edits to clarify that licensees must complete at least six hours of continuing education in ethics.

#### COMMENTS

The 31-day comment period ended October 9, 2023. During this period, HHSC received no public comments regarding the proposed rules.

### SUBCHAPTER A. GENERAL INFORMATION

#### 26 TAC §555.2

##### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter, and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under that subchapter, as well as reasonable and necessary administration and implementation fees, and continuing education hours required to renew a license under that subchapter.

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

Filed with the Office of the Secretary of State on November 16, 2023.

TRD-202304297

Karen Ray  
Chief Counsel  
Health and Human Services Commission  
Effective date: December 6, 2023  
Proposal publication date: September 8, 2023  
For further information, please call: (512) 438-3161

### SUBCHAPTER B. REQUIREMENTS FOR LICENSURE

#### 26 TAC §§555.11 - 555.13, 555.18

##### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter, and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under that subchapter, as well as reasonable and necessary administration and implementation fees, and continuing education hours required to renew a license under that subchapter.

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

Filed with the Office of the Secretary of State on November 16, 2023.

TRD-202304298

Karen Ray  
Chief Counsel  
Health and Human Services Commission  
Effective date: December 6, 2023  
Proposal publication date: September 8, 2023  
For further information, please call: (512) 438-3161

### SUBCHAPTER C. LICENSES

#### 26 TAC §§555.32, §555.35

##### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health

and Safety Code §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter, and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under that subchapter, as well as reasonable and necessary administration and implementation fees, and continuing education hours required to renew a license under that subchapter.

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

Filed with the Office of the Secretary of State on November 16, 2023.

TRD-202304299

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: December 6, 2023

Proposal publication date: September 8, 2023

For further information, please call: (512) 438-3161



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 15. TEXAS VETERANS COMMISSION**

#### **CHAPTER 460. FUND FOR VETERANS' ASSISTANCE PROGRAM**

##### **SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE FUND FOR VETERANS' ASSISTANCE PROGRAM**

###### **40 TAC §460.2**

The Texas Veterans Commission ("Commission") adopts amendment to Section 460.2 of Title 40, Part 15, Chapter 460 of the Texas Administrative Code concerning the Fund for Veterans' Assistance Grant Program Definitions without changes to the proposed text as published in the August 25, 2023, issue of the *Texas Register* (48 TexReg 4605). The rule will not be republished.

The amended rule is adopted following a comprehensive review of the chapter. Staff determined the need to update the rule language to ensure the agency's administrative rules are current and accurately reflect the Commission policies and procedures. Additionally, the changes will provide the Commission with more flexibility in awarding grant funds under the Veterans' Assistance Grant Program.

No comments were received regarding the proposed rule amendments.

The amended rule is adopted under Texas Government Code §434.010, granting the Commission the authority to establish rules it considers necessary for its administration, and Texas

Government Code §434.017, granting the Commission the authority to establish rules governing the award of grants by the Commission.

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

Filed with the Office of the Secretary of State on November 15, 2023.

TRD-202304283

Kathleen Cordova

General Counsel

Texas Veterans Commission

Effective date: December 5, 2023

Proposal publication date: August 25, 2023

For further information, please call: (737) 320-4167



###### **40 TAC §460.18**

The Texas Veterans Commission ("Commission") adopts a new rule, §460.18 concerning Service Dog Pilot Program, located in Chapter 460, Title 40, Part 15 of the Texas Administrative Code. This new section is adopted without changes to the proposed text as published in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4116) and will not be republished.

The new rule is adopted to reflect the directive by House Bill 2951, 88th Legislature, Regular Session (2023), allowing the commission to establish a pilot program for veterans to assist in mitigating the symptoms of military service-related post-traumatic stress disorder, traumatic brain injury, or military sexual trauma through the provision of a service dog.

The Commission received one written comment from K9s For Warriors regarding the proposed new rule. K9s For Warriors stated they supported the rule as proposed.

The new rule is authorized under Texas Government Code §434.010, granting the Commission the authority to establish rules, and Texas Government Code §434.017, granting the Commission the authority to establish rules governing the award of grants by the Commission.

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

Filed with the Office of the Secretary of State on November 15, 2023.

TRD-202304284

Kathleen Cordova

General Counsel

Texas Veterans Commission

Effective date: December 5, 2023

Proposal publication date: July 28, 2023

For further information, please call: (737) 320-4167



# TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

## Department of Aging and Disability Services

### Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, some agencies were abolished and their functions transferred to the Texas Health and Human Services Commission (HHSC). Texas Government Code, §531.0202(b), specified the Department of Aging and Disability Services (DADS) be abolished September 1, 2017, after all its functions were transferred to HHSC in accordance with Texas Government Code, §531.0201 and §531.02011. The former DADS rule in Texas Administrative Code, Title 40, Part 1, Chapter 2, Local Authority Responsibilities, Subchapter A, Local Authority Notification and Appeal is being transferred to Texas Administrative Code, Title 26, Part 1, Chapter 301, IDD-BH Contractor Administrative Functions, new Subchapter D, LIDDA, LMHA, and LBHA Notification and Appeal Process.

The rule will be transferred in the Texas Administrative Code effective January 1, 2024.

The following table outlines the rule transfer:

Figure: 40 TAC Chapter 2, Subchapter A

TRD-202304311

## Health and Human Services Commission

### Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, some agencies were abolished and their functions transferred to the Texas Health and Human Services Commission (HHSC). Texas Government Code, §531.0202(b), specified the Department of Aging and Disability Services (DADS) be abolished September 1, 2017, after all its functions were transferred to HHSC in accordance with Texas Government Code, §531.0201 and §531.02011. The former DADS rule in Texas Administrative Code, Title 40, Part 1, Chapter 2, Local Authority Responsibilities, Subchapter A, Local Authority Notification and Appeal is being transferred to Texas Administrative Code, Title 26, Part 1, Chapter 301, IDD-BH Contractor Administrative Functions, new Subchapter D, LIDDA, LMHA, and LBHA Notification and Appeal Process.

The rule will be transferred in the Texas Administrative Code effective January 1, 2024.

The following table outlines the rule transfer:

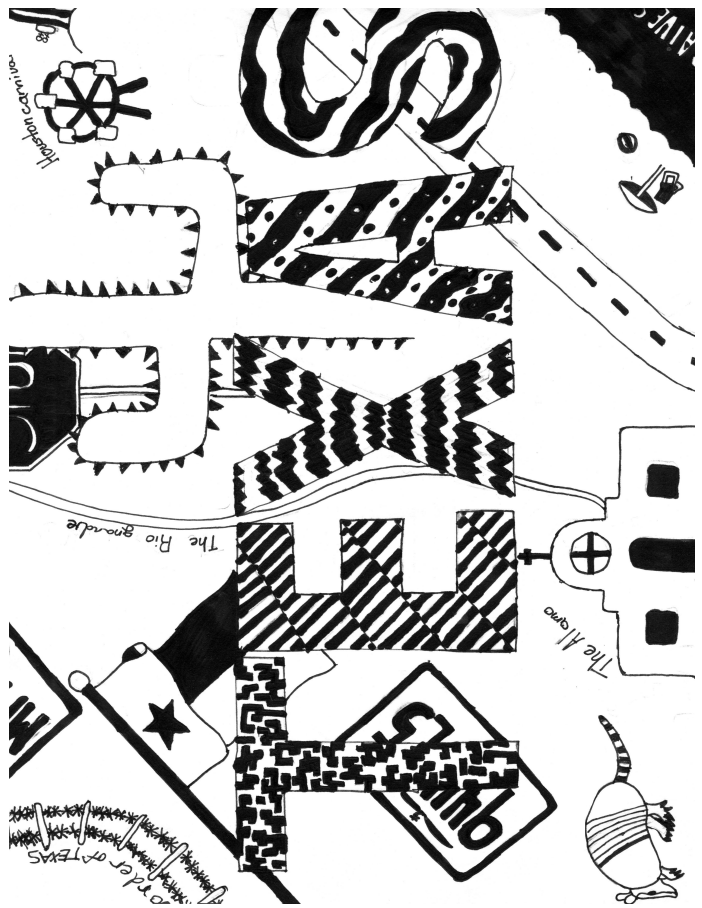
Figure: 40 TAC Chapter 2, Subchapter A

TRD-202304307

Figure: 40 TAC Chapter 2, Subchapter A

<b>Current Rules</b>	<b>Move to</b>
<b>Title 40. Social Services and Assistance</b>	<b>Title 26. Health and Human Services</b>
<b>Part 1. Department of Aging and Disability Services</b>	<b>Part 1. Texas Health and Human Services Commission</b>
<b>Chapter 2. Local Authority Responsibilities</b>	<b>Chapter 301. IDD-BH Contractor Administrative Functions</b>
<b>Subchapter A. Local Authority Notification And Appeal</b>	<b>Subchapter D. LIDDA, LMHA, and LBHA Notification and Appeal Process</b>
§2.46. Notification and Appeals Process.	§301.155. Notification and Appeal Process.





# REVIEW OF AGENCY RULES

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This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

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## Adopted Rule Reviews

Texas Department of Transportation

### Title 43, Part 1

Notice of Readoption

The Texas Department of Transportation (department) files notice of the completion of review and the readoption of Title 43 TAC, Part 1, Chapter 3, Public Information, Chapter 4, Employment Practices, Chapter 6, State Infrastructure Bank, Chapter 9, Contract and Grant Management, Chapter 12, Public Donation and Participation Program, Chapter 13, Materials Quality, Chapter 22, Use of State Property, Chapter 23, Travel Information, Chapter 25, Traffic Operations, and Chapter 29, Maintenance.

This review and readoption have been conducted in accordance with Government Code, §2001.039. The Texas Transportation Commission

(commission) has reviewed these rules and determined that the reasons for adopting them continue to exist. The department received no comments on the proposed rule review, which was published in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4868).

This concludes the review of Chapters 3, 4, 6, 9, 12, 13, 22, 23, 25, and 29.

TRD-202304301

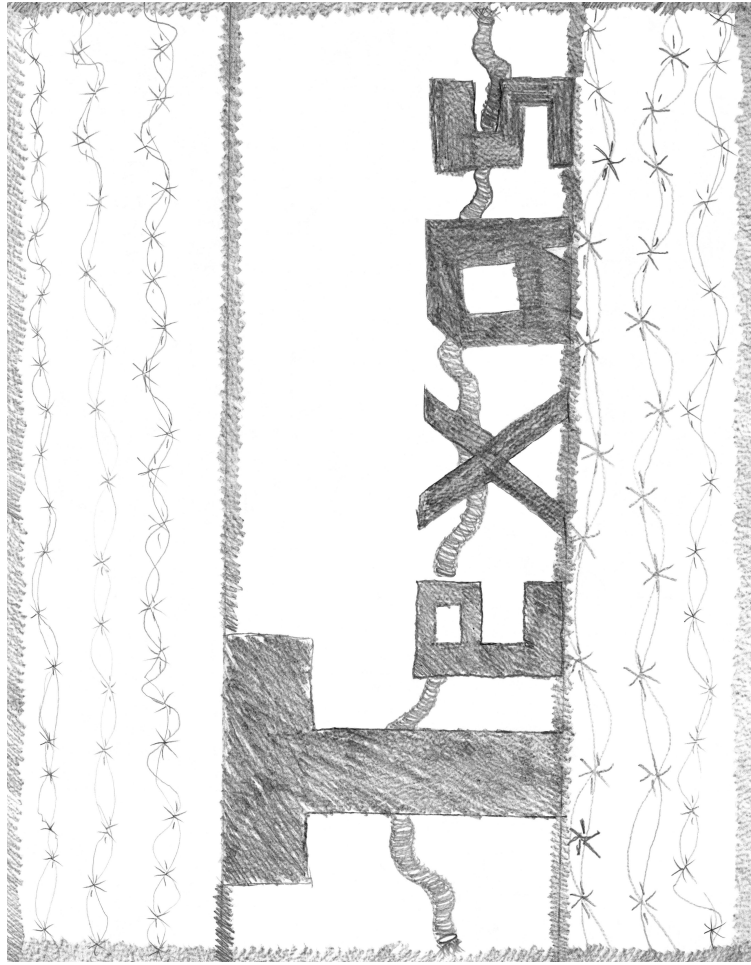
Leonard Reese

Senior General Counsel

Texas Department of Transportation

Filed: November 16, 2023





# TABLES & GRAPHICS

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

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Figure: 1 TAC §106.5(1)

**THE ENTITY MAINTAINING THIS WEBSITE IS A DATA BROKER UNDER TEXAS LAW. TO CONDUCT BUSINESS IN TEXAS, A DATA BROKER MUST REGISTER WITH THE TEXAS SECRETARY OF STATE (TEXAS SOS). INFORMATION ABOUT DATA BROKER REGISTRANTS IS AVAILABLE ON THE TEXAS SOS WEBSITE.**

**The entity maintaining this website is a data broker under Texas law. To conduct business in Texas, a data broker must register with the Texas Secretary of State (Texas SOS). Information about data broker registrants is available on the Texas SOS website.**

Figure: 1 TAC §106.5(2)

**THE ENTITY MAINTAINING THIS MOBILE APPLICATION IS A DATA BROKER UNDER TEXAS LAW. TO CONDUCT BUSINESS IN TEXAS, A DATA BROKER MUST REGISTER WITH THE TEXAS SECRETARY OF STATE (TEXAS SOS). INFORMATION ABOUT DATA BROKER REGISTRANTS IS AVAILABLE ON THE TEXAS SOS WEBSITE.**

**The entity maintaining this mobile application is a data broker under Texas law. To conduct business in Texas, a data broker must register with the Texas Secretary of State (Texas SOS). Information about data broker registrants is available on the Texas SOS website.**

Figure: 16 TAC §7.460(f)

**Classification System**

<b>Violation Factors</b>	<b>Factor Value (1-4)</b>	<b>Points Tally</b>
Customer is disconnected in violation of subsection (b)(1) of this section for 24 hours or more	4	
Customer is disconnected in violation of subsection (b)(1) of this section for less than 24 hours, but more than 12 hours	3	
Customer is disconnected in violation of subsection (b)(1) of this section for 12 hours or less	2	
Demand for collection of full payment of bills due is made during an extreme weather emergency	3	
The temperature is 10 degrees or less during the period of disconnection	4	
The temperature is more than 10 degrees but less than or equal to 20 degrees during the period of disconnection	3	
The temperature is more than 20 degrees but less than or equal to 32 degrees during the period of disconnection	2	
Repeat violations based on provider's history of compliance	3	
Good faith effort to remedy violation	-2	
No effort to remedy violation during the extreme weather emergency	4	
		Total
		<b>Penalty maximum per violation</b>
10 points or more = Class A violation		More than \$5,000 <sup>1</sup>
7-9 points = Class B violation		\$5,000
4-6 points = Class C violation		\$4,000
1-3 points = Class D violation		\$3,000

<sup>1</sup> Pursuant to Utilities Code §105.023(f), the required classification system shall provide that a penalty in an amount that exceeds \$5,000 may be recovered only if the violation is included in the highest class of violations in the classification system.



# IN

# ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Texas 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 **January 5, 2024**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **January 5, 2024**. 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: CS FRANKE DEVELOPMENT LLC; DOCKET NUMBER: 2022-0216-WQ-E; IDENTIFIER: RN111196382; LOCATION: Lindale, Smith County; TYPE OF FACILITY: residential construction; RULES VIOLATED: 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR1520EO, Part III, Section F.2.(c)(i)(A)(1), by failing to install sedimentation basins; 30 TAC §305.125(1), and TPDES General Permit Number TXR1500EO, Part III, Section F.4.(d), by failing to place velocity dissipation devices at discharge locations and along the length of any outfall channel; 30 TAC §305.125(1) and TPDES General Permit Number TXR1520EO, Part III, Section F.7.(c), by failing to perform inspections of the site at least once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater; 30 TAC §305.125(1) and TPDES General Permit Number TXR1520EO, Part III, Section G.1, by failing to install and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants; and 30 TAC §305.125(1), TWC, §26.121(a), and TPDES General Permit Number TXR1520EO, Part III, Section G.1, by failing to install and maintain best management practices at the

site which resulted in a discharge of pollutants into or adjacent to any water in the state; PENALTY: \$20,750; ENFORCEMENT COORDINATOR: Monica Larina, (361) 881-6965; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: Harris County; DOCKET NUMBER: 2022-0433-PWS-E; IDENTIFIER: RN101194660; LOCATION: Humble, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §§290.106(e), 290.107(e), and 290.115(e), by failing to provide the results of nitrate, volatile organic chemical (VOC) contaminants, and Stage 2 Disinfection Byproducts sampling to the executive director (ED) for the January 1, 2021 - December 31, 2021, monitoring period; 30 TAC §290.107(e), by failing to provide the results of synthetic organic chemical Group 5 contaminants sampling to the ED for the January 1, 2019 - December 31, 2021, monitoring period; and 30 TAC §290.107(e), by failing to provide the results of VOC contaminants sampling to the ED for the third and fourth quarters of 2020; PENALTY: \$2,400; ENFORCEMENT COORDINATOR: Ashley Lemke, (512) 239-1118; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: KING, BRANDON; DOCKET NUMBER: 2023-1582-WQ-E; IDENTIFIER: RN111797122; LOCATION: Canton, Van Zandt County; TYPE OF FACILITY: operator; RULES VIOLATED: TWC, §11.081 and §11.121, by failing to obtain authorization prior to appropriating any state water or beginning construction of any work designed for the storage, taking, or diversion of water; PENALTY: \$350; ENFORCEMENT COORDINATOR: Shane Glantz, (325) 698-6124; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: Permian Basin Materials, LLC; DOCKET NUMBER: 2022-0237-WQ-E; IDENTIFIER: RN105494827; LOCATION: Fort Stockton, Pecos County; TYPE OF FACILITY: cement and concrete product manufacturing plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System General Permit Number TXG111980, Part III, Permit Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$2,813; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(5) COMPANY: Ranger Ready Mix, LLC; DOCKET NUMBER: 2021-1597-WQ-E; IDENTIFIERS: RN108365560 and RN109335026; LOCATION: Hutto and Georgetown, Williamson County; TYPE OF FACILITIES: concrete batch plants; RULES VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d) and Texas Pollutant Discharge Elimination System General Permit Numbers TXG111622 and TXG111897, Part III, Section A, Permit Requirements Numbers 1 and 2; and Part IV, Standard Permit Conditions Number 7.f, by failing to timely submit monitoring results at intervals specified in the permit; PENALTY: \$22,010; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(6) COMPANY: Ronan Bailey Smith dba Starlite Mobile Home Park; DOCKET NUMBER: 2022-0358-PWS-E; IDENTIFIER: RN101457554; LOCATION: Brenham, Washington County; TYPE

OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(A), by failing to locate the facility's well at least 50 feet from a tile or concrete sanitary sewer, sewerage appurtenance, septic tank, storm sewer, or cemetery or provide sanitary or storm sewers constructed of ductile iron or polyvinyl chloride pipe meeting American Water Works Association standards, having a minimum working pressure of 150 pounds per square inch or greater, and equipped with pressure type joints at distances of less than 50 feet from a proposed well site, but in no case less than ten feet; 30 TAC §290.41(c)(3)(M), by failing to provide suitable sampling cocks on the discharge pipe of the facility's two wells pump prior to any treatment; 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.43(d)(2), by failing to provide the facility's pressure tanks with a pressure release device and an easily readable pressure gauge; 30 TAC §290.44(d)(6), by failing to provide all dead-end mains with acceptable flush valves and discharge piping; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system and in the water entering the distribution system at all times; 30 TAC §290.46(v), by failing to ensure that the electrical wiring is securely installed in compliance with a local or national electrical code; and 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; PENALTY: \$4,280; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-202304306

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: November 17, 2023



#### Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Proposed Air Quality Registration Number 174037

**APPLICATION.** Martin Marietta Texas Ready-Mix LLC, 1503 LBJ Freeway Suite 400, Dallas, Texas 75234-6007 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 174037 to authorize the operation of a concrete batch plant. The facility is proposed to be located at 2005 South McDonald Street, McKinney, Collin County, Texas 75069. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <https://gisweb.tceq.texas.gov/Location-Mapper/?marker=-96.625,33.169722&level=13>. This application was submitted to the TCEQ on September 21, 2023. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on November 16, 2023.

**PUBLIC COMMENT / PUBLIC HEARING.** Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically

at [www14.tceq.texas.gov/epic/eComment/](http://www14.tceq.texas.gov/epic/eComment/). 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.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

**The Public Hearing is to be held:**

**Thursday, January 4, 2024, at 6:00 p.m.**

**Sheraton McKinney Hotel**

**1900 Gateway Boulevard**

**McKinney, Texas 75070**

**RESPONSE TO COMMENTS.** A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

**CENTRAL/REGIONAL OFFICE.** The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Dallas/Fort Worth Regional Office, located at 2309 Gravel Dr, Fort Worth, Texas 76118-6951, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

**INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.**

Further information may also be obtained from Martin Marietta Texas Ready-Mix, LLC, 1503 LBJ Freeway Suite 400, Dallas, Texas 75234-6007, or by calling Mrs. Melissa Fitts, Senior Vice President with Westward Environmental at (830) 249-8284.

Notice Issuance Date: November 16, 2023

TRD-202304321

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 17, 2023



#### Notice of Completion of Technical Review for Minor Amendment Radioactive Material License Number R04100

Notice Issued on November 17, 2023

APPLICATION. Waste Control Specialists LLC (WCS) has applied to the Texas Commission on Environmental Quality (TCEQ) for a minor amendment to Radioactive Material License R04100. Radioactive Material License R04100 authorizes the commercial disposal of Low-Level Radioactive Waste (LLRW) and storage and processing of radioactive substances. The application for a minor amendment was received on June 20, 2023.

The facility is located at 9998 State Highway 176 West in Andrews County, Texas. 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. For the exact location, refer to the application. <https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-103.063055%2C32.4425&level=12>.

PRELIMINARY DECISION. The TCEQ Executive Director has completed the technical review of the amendment application and prepared a draft license. The draft license, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this license, if issued, meets all statutory and regulatory requirements.

The TCEQ Executive Director has determined that a minor amendment to the license is appropriate because it does not pose a detrimental impact and is in consideration of maintaining public health and safety, worker safety, and environmental health. The license will be amended to incorporate the updated Nuclear Regulatory Commission (NRC) Order (Docket No. 70-7005) to relocate the transuranic waste from Los Alamos National Laboratory (LANL) from the Federal Waste Facility to the Bin Storage Area 1 (BSA-1) and prepare the LANL waste in an enclosure at BSA-1 to make it transport ready, increase the financial assurance of the disposal facility to cover the Phase 2a expansion of the Compact Waste Facility (CWF), revise procedure EV-1.0.0, Consolidated Radiological Environmental Monitoring Program, to account for changes in monitoring wells due to necessary relocations from the CWF Phase 2a expansion, authorize higher activity waste (beyond the currently authorized license condition (LC) 192 exempt waste) for processing using GeoMelt In Container Vitrification (ICV), and revise procedure RS-5.0.0, Radiological Waste Process for the RCRA Landfill, to change the values in table 1, "Controlling Concentrations", used for determining if waste is eligible for the LC 192 exemption. The license will not be amended to extend the time that the Licensee can store transuranic waste that originated at LANL to December 31, 2024. The license application, the Executive Director's technical summary, and the amended draft license are available for viewing and copying at the TCEQ's central office in Austin, Texas and at the Andrews Public Library, 109 NW 1st Street, Andrews, Texas, 79714.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting about 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. 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.

EXECUTIVE DIRECTOR ACTION. The amendment is subject to Commission rules which direct the Executive Director to act on behalf of the Commission and provide authority to the Executive Director to issue final approval of the application for amendment after consideration of all timely comments submitted on the application.

MAILING LIST. If you submit public comments or a request for reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific 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 license number; and/or (2) the mailing list for a specific county. If you wish 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](http://www.tceq.texas.gov/goto/cid). Once you have access to the CID using the above link, enter the license 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 <https://www.tceq.texas.gov/agency/decisions/cc/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 within 10 days from the date of this notice or 10 days from the date of publication in the *Texas Register*, whichever is later. 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 license application or the licensing 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](http://www.tceq.texas.gov/goto/pep). Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from WCS at the facility address stated above or by calling Mr. Jay Cartwright at (432) 525-8698.

TRD-202304320

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 17, 2023



## Notice of District Petition

Notice issued September 8, 2023

TCEQ Internal Control No. D-05252023-050; KSH Group, LLC, a Texas limited liability company, Andrewakka, LLC, a Texas limited liability company, Terrell FM429 Land, LLC, a Texas limited liability company, Poonuru, LLC, a Texas limited liability company and Terrell 429 Eaden Prairie, LLC, a Texas limited liability company, ("Petitioners") filed a petition for creation of Kaufman County Municipal Utility District No. 25 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article III, Section 52 and 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 Petitioners own of a majority in value of the land to be included in the proposed District; (2) there are two lienholders, Texas Farm Credit Services, FLCA and Texas Heritage National Bank, on the property to be included in the proposed District, and the aforementioned entities have consented to the creation of the District and inclusion of the land in the District; (3) the proposed District will contain approximately 574.887 acres of land, located entirely within Kaufman County, Texas; and (4) none of the land to be included in the proposed District is within the corporate limits or extraterritorial jurisdiction of any municipality. The petition further states that

the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks, sanitary sewer, drainage and storm sewer system, and road facilities for residential and commercial purposes, (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the District, (3) control, abate and amend local storm waters or other harmful excesses of waters in the District, and (4) such other purchase, construction, acquisition, improvement, maintenance and operation of such additional facilities, systems, plants and enterprises as shall be consistent with all of the purposes for which the District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners, from the information available at this time, that the cost of said project will be approximately \$28,850,000.

#### 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](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202304322

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 17, 2023



Notice of District Petition

Notice issued November 17, 2023

TCEQ Internal Control No. D-09292023-043; RFJJ HWY 21, LLC., a Texas limited liability company, (Petitioner) filed a petition for creation

of Caldwell County Municipal Utility District No. 7 (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 holds title to a majority in value of the land to be included in the proposed District; (2) there is one lienholder, JLE Investments, LLC, on the property to be included in the proposed District and the aforementioned entity has consented to the creation of the District; (3) the proposed District will contain approximately 153.84 acres of land, more or less, located within Caldwell County, Texas; (4) all of the land to be included within the proposed District is within the extraterritorial jurisdiction of the City of Mustang Ridge (City); and (5) the City has consented to the creation of the District. The petition further states that the proposed District will: (1) construct, maintain, and operate a waterworks system, including the purchase and sale of water, for domestic and commercial purposes; (2) construct, maintain, and operate a sanitary sewer collection, treatment, and disposal system, for domestic and commercial purposes; (3) construct, install, maintain, purchase, and operate drainage and roadway facilities and improvements; and (4) construct, install, maintain, purchase, and operate such additional facilities, systems, plants, and enterprises as shall be consonant with the purposes for which the District is created. It further states that the planned residential and commercial development of the area and the present and future inhabitants of the area will be benefited by the above-referenced work, which will promote the purity and sanitary condition of the State's waters and the public health and welfare of the community. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately \$30,815,000 (\$22,350,000 for water, wastewater, and drainage facilities and \$8,465,000 road facilities).

#### 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](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O.

Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202304323

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 17, 2023



## Notice of District Petition

Notice issued November 17, 2023

TCEQ Internal Control No. D-09122023-013; Greenwood Land Holdings, LLC, (Petitioner) filed a petition for creation of Waller County Municipal Utility District No. 53 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Capital Farm Credit, ACA, on the property to be included in the proposed District and the lienholder consents to the creation of the proposed District; (3) the proposed District will contain approximately 122.7422 acres located within Waller County, Texas; and (4) the land within the proposed District is not within the corporate limits or extraterritorial jurisdiction of any city. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, extend, maintain, and operate a waterworks and sanitary sewer system for domestic and commercial purposes and the purchase, construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the proposed District; (2) control, abate, and amend local storm waters or other harmful excesses of water; (3) purchase interests in land and purchase, construct, acquire, improve, extend, maintain, and operate improvements, facilities, and equipment for the purpose of providing recreational facilities. Additionally, pursuant to §54.234, Texas Water Code, as amended, the proposed District may also exercise road powers and authority pursuant to applicable law, the proposed District may also establish, finance, provide, operate and maintain a fire department and/or fire-fighting services within the proposed District.

According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$30,020,000 (\$21,920,000 for water, wastewater, drainage facilities and \$8,100,000 for roads).

### 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](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an

official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202304324

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 17, 2023



## Notice of District Petition

Notice issued November 17, 2023

TCEQ Internal Control No. D-05092023-019; Lackland Creekview Development, LLC, a Texas limited liability company, (Petitioner) filed a petition with the Texas Commission on Environmental Quality (TCEQ) for the annexation of land into Grayson County Municipal Utility District No. 8 (District) under Texas Water Code Chapters 49 and 54, Texas Local Government Code Sections (§§) 42.042 and 42.0425 and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to all the property in the proposed annexation area to be included in the District; (2) the proposed property annexation will contain approximately 70.201 acres of land located within Grayson County; (3) all of the land to be included within the proposed property annexation is within the extraterritorial jurisdiction of the City of Van Alstyne, Texas (City); and (4) there is one lienholder on the property, American National Bank and Trust, and they have consented to the proposed annexation. The property proposed for annexation is a non-contiguous tract located east of the existing District boundaries and approximately one quarter mile east of the City. Access to the annexation tract will be by Farm-to-Market Road 3133. In accordance with Local Government Code §42.042 and Texas Water Code §54.016, the petition was submitted to the City, requesting the City's consent to the creation of the District. After more than 90 days passed without receiving consent, the Petitioner submitted a petition to the City to provide water and sewer services to the proposed District. The 120-day period for reaching a mutually agreeable contract as established by the Texas Water Code §54.016(c) expired and the information provided indicates that the Petitioner and the City have not executed a mutually agreeable contract for service. Pursuant to Texas Water Code §54.016(d), failure to execute such

an agreement constitutes authorization for the Petitioner to initiate proceedings to include the land within the proposed District.

#### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202304325

Laurie Gharis  
Chief Clerk

Texas Commission on Environmental Quality  
Filed: November 17, 2023



#### Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 5, 2024**. The commission will consider any writ-

ten comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 5, 2024**. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: Charles Patrick Patterson; DOCKET NUMBER: 2019-1447-MSW-E; TCEQ ID NUMBER: RN110852795; LOCATION: 10510 County Road 6910, Lubbock, Lubbock County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULE VIOLATED: 30 TAC §330.15(c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: \$1,250; STAFF ATTORNEY: Barrett Hollingsworth, Litigation, MC 175, (512) 239-0657; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

TRD-202304309

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: November 17, 2023



#### Notice of Opportunity to Comment on an Agreed Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Order (AO) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 5, 2024**. 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 the proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applica-

ble regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 5, 2024**. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Juan Malto; DOCKET NUMBER: 2021-0789-MSW-E; TCEQ ID NUMBER: RN11245551; LOCATION: north of the terminus of Hughes Road near Big Lake, Reagan County; TYPE OF FACILITY: municipal solid waste (MSW) disposal site; RULE VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: \$12,500; STAFF ATTORNEY: William Hogan, Litigation, MC 175, (512) 239-5918; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

TRD-202304308  
Gitanjali Yadav  
Deputy Director, Litigation  
Texas Commission on Environmental Quality  
Filed: November 17, 2023



**Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of BPR Enterprises, L.L.C. SOAH Docket No. 582-24-04319 TCEQ Docket No. 2022-0453-PWS-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 via Zoom videoconference at:

10:00 a.m. - December 14, 2023

To join the Zoom meeting via computer or smart device:

<https://soah-texas.zoomgov.com>

**Meeting ID:** 161 984 0712

**Password:** TCEQDC1

or

To join the Zoom meeting via telephone dial:

+1 (669) 254-5252

**Meeting ID:** 161 984 0712

**Password:** 5247869

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed June 7, 2023, concerning assessing administrative penalties against and requiring certain actions of BPR Enterprises, L.L.C., for violations in Parker County, Texas, of: 30 Texas Administrative Code §290.42(b)(1) and (e)(3), and §290.46(n)(1) and (n)(3).

The hearing will allow BPR Enterprises, L.L.C., 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 BPR Enterprises, L.L.C., the Executive Director of the Commis-

sion, 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 BPR Enterprises, L.L.C. 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.** BPR Enterprises, L.L.C., the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Health & Safety Code ch. 341, Tex. Water Code ch. 5, and 30 Texas Administrative Code chs. 70 and 290; 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 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Marilyn Norrod, 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 Sheldon Wayne, Staff Attorney, Office of 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 [www.tceq.texas.gov/goto/efilings](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 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.soah.texas.gov](http://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: November 9, 2023

TRD-202304318

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 17, 2023



**Notice of Public Meeting for TPDES Permit for Municipal Wastewater New Permit No. WQ0016281001**

**APPLICATION.** Gram Vikas Partners, Inc., 214 West Bandera Road #114-474, Boerne, Texas 78006, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016281001, to autho-

alize the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. TCEQ received this application on January 10, 2023.

The facility will be located approximately 0.2 miles west of the intersection of County Road 341 and County Road 442, in Medina County, Texas 78861. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

<https://gisweb.tceq.texas.gov/LocationMapper/?marker=-99.144444,29.380277&level=18>

The treated effluent will be discharged directly to Hondo Creek in Segment No. 2114 of the Nueces River Basin. The designated uses for Segment No. 2114 are primary contact recreation, public water supply, aquifer protection, and high aquatic life use. In accordance with 30 Texas Administrative Code §307.5 and the TCEQ *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Hondo Creek, which has been identified as having high aquatic life uses. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

**ALTERNATIVE LANGUAGE NOTICE.** Alternative language notice in Spanish is available at <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices>. El aviso de idioma alternativo en español está disponible en <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices>.

**PUBLIC COMMENT / PUBLIC MEETING.** A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

**The Public Meeting is to be held:**

**Tuesday, January 9, 2024, at 7:00 p.m.**

**Graff 7A Event Barn**

**911 US Hwy 90 E**

**Hondo, Texas 78861**

**INFORMATION.** Members of the public are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at [www.tceq.texas.gov/goto/comment](http://www.tceq.texas.gov/goto/comment). If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our web site at <https://www.tceq.texas.gov>.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Hondo Public Library, 2003 Avenue K, Hondo, Texas. Further information may also be obtained from Gram Vikas Partners, Inc. at the address stated above or by calling Mr. Kelly Leach at (210) 827-7918.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issuance Date: November 17, 2023

TRD-202304319

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 17, 2023

◆ ◆ ◆  
**Texas Department of Insurance**

Notice of Public Hearing

**PROPOSED AMENDMENTS TO NOTICE REQUIREMENTS AND UNCOOPERATIVE INSURED NONRENEWAL RULES**

**DOCKET NO. 2843**

The commissioner of insurance will hold a public hearing to consider proposed amendments to the Notice Requirements and Uncooperative Insured Nonrenewal rules. The hearing will begin at 2:30 p.m., central time, December 14, 2023, in Room 2.029 of the Barbara Jordan Building, 1601 Congress Avenue in Austin, Texas.

The proposed amendments were published in the October 6, 2023, issue of the *Texas Register*. The proposed amendments may also be viewed at [www.tdi.texas.gov/rules/2023/documents/57101uncoop.pdf](http://www.tdi.texas.gov/rules/2023/documents/57101uncoop.pdf). Due to this hearing, the comment period is extended to 5:00 p.m., central time, December 14, 2023.

You may submit written comments or make oral comments on this rulemaking at the hearing, or you may submit your written comments to TDI on or before 5:00 p.m., central time, on December 14, 2023. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. Please include the docket number on any written or emailed comments.

TRD-202304300

Jessica Barta

General Counsel

Texas Department of Insurance

Filed: November 16, 2023



◆ ◆ ◆  
**Supreme Court of Texas**

Final Approval of Texas Rules of Civil Procedure 194a and 195a and of Amendments to Texas Rules of Civil Procedure 190, 192, 194, 195, 196, 197, and 198

*(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 figure is available in the on-line version of the December 1, 2023, issue of the Texas Register.)*

TRD-202304313

Jaclyn Daumerie  
Rules Attorney  
Supreme Court of Texas  
Filed: November 17, 2023

◆ ◆ ◆  
Final Approval of the Repeal of Texas Rule of Appellate Procedure 28.2 and of Amendments to Texas Rule of Appellate Procedure 28.3

# Supreme Court of Texas

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Misc. Docket No. 23-9093

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## Final Approval of the Repeal of Texas Rule of Appellate Procedure 28.2 and of Amendments to Texas Rule of Appellate Procedure 28.3

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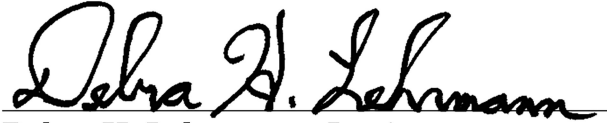
ORDERED that:

1. On July 25, 2023, in Misc. Dkt. No. 23-9047, the Court preliminarily approved the repeal of Texas Rule of Civil Procedure 28.2 and amendments to Texas Rule of Civil Procedure 28.3, effective September 1, 2023, and invited public comment.
2. Following the comment period, the Court made revisions to Texas Rule of Appellate Procedure 28's title and to Texas Rule of Appellate Procedure 28.3. This Order incorporates the revisions and contains the final version of the rules, effective immediately.
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 this Order for publication in the *Texas Register*.

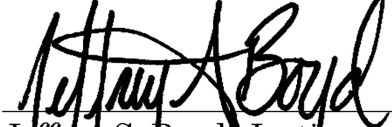
Dated: November 17, 2023.



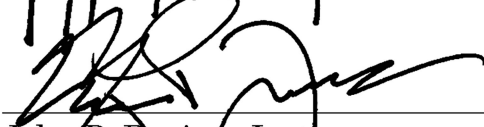
Nathan L. Hecht, Chief Justice



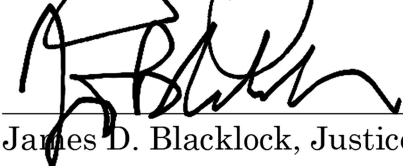
Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice



James D. Blacklock, Justice



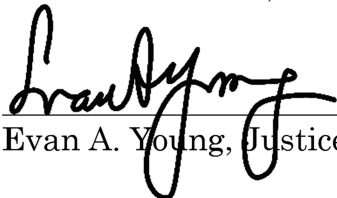
J. Brett Busby, Justice



Jane N. Bland, Justice



Rebeca A. Huddle, Justice



Evan A. Young, Justice

# TEXAS RULES OF APPELLATE PROCEDURE

## Rule 28. Accelerated, ~~Agreed,~~ and Permissive Appeals in Civil Cases

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### [28.2. Repealed effective September 1, 2023]

### 28.3. Permissive Appeals in Civil Cases.

- (a) *Petition Required.* When a trial court has permitted an appeal from an interlocutory order that would not otherwise be appealable, a party seeking to appeal must petition the court of appeals for permission to appeal.
- (b) *Where Filed.* The petition must be filed with the clerk of the court of appeals having appellate jurisdiction over the action in which the order to be appealed is issued. The First and Fourteenth Courts of Appeals must determine in which of those two courts a petition will be filed.
- (c) *When Filed.* The petition must be filed within 15 days after the order to be appealed is signed. If the order is amended by the trial court, either on its own or in response to a party's motion, to include the court's permission to appeal, the time to petition the court of appeals runs from the date the amended order is signed.
- (d) *Extension of Time to File Petition.* The court of appeals may extend the time to file the petition if the party:
  - (1) files the petition within 15 days after the deadline, and
  - (2) files a motion complying with Rule 10.5(b).
- (e) *Contents.* The petition must:
  - (1) contain the information required by Rule 25.1(d) to be included in a notice of appeal;
  - (2) ~~attach a copy of the order from which appeal is sought;~~
    - (A) a copy of the order from which appeal is sought;

- (B) a copy of every file-marked document that is material to the order from which appeal is sought and that was filed in the trial court; and
- (C) a properly authenticated transcript of any relevant testimony from the underlying proceeding, including any relevant exhibits offered in evidence relating to the order from which appeal is sought; a statement that the transcript has been ordered and will be filed when it is received; or a statement that no evidence was adduced in connection with such order.
- (3) contain a table of contents, index of authorities, issues presented, and a statement of facts; and
- (4) argue clearly and concisely why the order to be appealed involves a controlling question of law as to which there is a substantial ground for difference of opinion and how an immediate appeal from the order may materially advance the ultimate termination of the litigation.
- (f) *Response; Reply; Cross-Petition; Time for Filing.* If any party timely files a petition, any other party may file a response or a cross-petition within 10 days. A party may file a response to a cross-petition within 10 days of the date the cross-petition is filed. A petitioner or cross-petitioner may reply to any matter in a response within 7 days of the date the response is filed. The court of appeals may extend the time to file a response, reply, and cross-petition.
- (g) *Length of Petition, Cross-Petition, Response, and Reply.* A petition, cross-petition, response, and reply must comply with the length limitations in Rule 9.4(i)(2)(D)-(E).
- (h) *Service.* A petition, cross-petition, response, and reply must be served on all parties to the trial court proceeding.
- (i) *Docketing Statement.* Upon filing the petition, the petitioner must file the docketing statement required by Rule 32.1.
- (j) *Time for Determination.* Unless the court of appeals orders otherwise, a petition, and any cross-petition, response, and reply,

will be determined without oral argument, no earlier than 10 days after the petition is filed.

(k) *When Petition Granted.* If the petition is granted, a notice of appeal is deemed to have been filed under Rule 26.1(b) on that date, and the appeal is governed by the rules for accelerated appeals. A separate notice of appeal need not be filed. A copy of the order granting the petition must be filed with the trial court clerk.

(l) *When Petition Denied.* If the court of appeals denies the petition, the court must explain in its decision the specific reasons for its finding that an appeal is not warranted. On petition for review, the Supreme Court may review the court of appeals' denial de novo, and, if the Supreme Court concludes that the statutory prerequisites for a permissive appeal are met, the Supreme Court may direct the court of appeals to grant permission to appeal.

Comment to 2023 change: Rule 28.2 is repealed. Rule 28.3 is amended to implement sections 51.014(g) and (h) of the Civil Practice and Remedies Code and governs the procedure for all permissive appeals filed after September 1, 2023.

TRD-202304314  
Jaclyn Daumerie  
Rules Attorney  
Supreme Court of Texas  
Filed: November 17, 2023



#### Order Approving Amendments to the Rules and Fees of the Judicial Branch Certification Commission

*(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 figure is available in the on-line version of the December 1, 2023, issue of the Texas Register.)*

TRD-202304315  
Jaclyn Daumerie  
Rules Attorney  
Supreme Court of Texas  
Filed: November 17, 2023



#### Texas Windstorm Insurance Association

##### TFPA Announces RFP December 2023

TFPA invites all qualified Respondents to submit proposals in accordance with the requirements outlined in the below-listed Request for Proposals (RFP) issued by TFPA.

The purpose of the RFP is to obtain proposals from qualified Respondents for all services related to the development and management of commercial and liability insurance policies for Property Owner Associations to be offered by TFPA. These services would include, but may not be limited to, the underwriting and issuance of policies, the billing and collection of premiums, and handling of claims. More information about the required services will be included in the RFP.

A copy of the RFP will be posted to <https://www.twia.org/vendor-requests/> no later than December 4, 2023.

For more information on the requirements for proposals to be submitted by interested Respondents, please contact the Vendor and Contract Manager at [vendormanagement@twia.org](mailto:vendormanagement@twia.org).

Important deadlines pertaining to the RFP is as follows:

RFP Type: POA Commercial and Liability Insurance

RFP Issuance Date: December 4, 2023

Proposal Due Date: January 5, 2024

Provisional RFP Award Date: January 26, 2024

TRD-202304317

Brooke Adam

Risk Manager

Texas Windstorm Insurance Association

Filed: November 17, 2023



## How to Use the Texas Register

**Information Available:** The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Review of Agency Rules** - notices of state agency rules review.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 48 (2023) is cited as follows: 48 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 “48 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 48 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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