

ADOPTED RULES

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

TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

The Texas Board of Architectural Examiners (Board) adopts amendments to §1.22, concerning Registration by Reciprocal Transfer, §1.29, concerning Registration of a Military Service Member, Military Veteran, or Military Spouse, and §1.69, concerning Continuing Education Requirements, without changes to the proposed text published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9047).

Reasoned Justification. The amendments are adopted pursuant to the requirements contained in Senate Bill 1307 (84th Texas Legislature), amending Chapter 55 of the Texas Occupations Code, relating to Licensing of Military Service Members, Military Veterans, and Military Spouses. Chapter 55 requirements have been implemented in the Board's rules, as follows. First, the heading for §1.29 has been changed to "Registration of a Military Service Member, Military Veteran, or Military Spouse." Additionally, the definitions of "active duty," "armed forces of the United States," "military service member," "military spouse" and "military veteran" have been amended to match the definitions enacted under SB 1307. Lastly, §1.29 addresses the eligibility for registration of military service members, military veterans, and military spouses, and provides for expedited consideration of applications filed by military service members, veterans, and spouses, as required under Chapter 55.

Additionally, §1.22 is amended to delete a provision granting expedited consideration of an application filed by a military spouse. A similar provision has been included in §1.29.

Finally, §1.69 is amended to allow a military service member an additional two years to complete continuing education requirements, as required under Chapter 55.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rules.

SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §1.22, §1.29

Statutory Authority. The amendments are adopted under Texas Occupations Code §§1051.202, 1051.305, and 1051.705, and implement the requirements contained in Texas Occupations Code §§55.003, 55.004 and §55.005.

Texas Occupations Code §1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Texas Occupations Code §1051.705 and §1051.305 authorize the Board to set the eligibility requirements for registration by examination and reciprocity, respectively.

Texas Occupations Code §1051.356 requires the Board to administer continuing education programs for registrants.

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

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Texas Board of Architectural Examiners

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For further information, please call: (512) 305-8519



SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §1.69

Statutory Authority. The amendments are adopted under Texas Occupations Code §§1051.202, 1051.305, and 1051.705, and implement the requirements contained in Texas Occupations Code §§55.003, 55.004 and §55.005.

Texas Occupations Code §1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Texas Occupations Code §1051.705 and §1051.305 authorize the Board to set the eligibility requirements for registration by examination and reciprocity, respectively.

Texas Occupations Code §1051.356 requires the Board to administer continuing education programs for registrants.

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 §1.65

The Texas Board of Architectural Examiners (Board) adopts amendments to §1.65, concerning Annual Renewal Procedure. The amendments are adopted without changes to the proposed text published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9049).

Reasoned Justification. House Bill 7 of the 84th Texas Legislature eliminated the \$200 professional fee that was previously charged to the Board's registrants. This fee was previously implemented under Texas Occupations Code §1051.652, which has been repealed. However, §1.65 contains reference to the repealed \$200 fee. The adopted amendment to §1.65 eliminates reference to the \$200 fee, ensuring compliance between the Board's rules and the legislature's enactment.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rule.

Statutory Authority. The amendments are adopted pursuant to Texas Occupations Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design, and the repeal of Texas Occupations Code §1051.652 under House Bill 7 (84th Texas Legislature), which eliminated the Board's statutory requirement to collect the \$200 professional fee.

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

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CHAPTER 3. LANDSCAPE ARCHITECTS

The Texas Board of Architectural Examiners (Board) adopts amendments to §3.21, concerning Registration by Examination, and §3.191, concerning Description of Experience Required for Registration by Examination, without changes to the proposed text published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9050).

Reasoned Justification.

Generally §3.21 requires an applicant for landscape architect registration to have a professional degree from a landscape architectural educational program accredited by the Landscape Architectural Accreditation Board (LAAB). However, LAAB

does not provide accreditation for foreign programs, so §3.21 allows foreign programs in landscape architecture to be considered under an alternative test. Under the previous version of §3.21(a)(1)(D), an applicant for landscape architect registration by examination who had graduated from a foreign educational program was required to have the foreign degree evaluated by Education Credential Evaluators (ECE) or another organization acceptable to the Board, and receive a conclusion from ECE that the program "is substantially equivalent to an LAAB accredited program." However, ECE has informed TBAE that it cannot give an evaluation concluding that a foreign degree is equivalent to a LAAB-accredited professional degree.

Therefore, under the adopted amendments to §3.21 eligibility is extended to applicants with a foreign degree that is evaluated by ECE and deemed to be equivalent to a doctorate, master's degree or baccalaureate degree in landscape architecture. The Board concludes that this is a reasonable alternative that allows consideration of foreign landscape architectural degrees that are not eligible for accreditation by LAAB.

Additionally, §3.191 is amended to require three years of experience under the Texas Table of Equivalents for Experience in Landscape Architecture from foreign graduates, as opposed to the two years that is required of a graduate of a LAAB-accredited program. This additional year of experience is intended offer additional assurance of qualifications for a foreign graduate of an approved program that is ineligible for LAAB certification.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rules.

SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §3.21

Statutory Authority. The amendments are adopted under Texas Occupations Code §1051.202 and §1052.154.

Texas Occupations Code §1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Texas Occupations Code §1052.154 authorizes the Board to recognize and approve the landscape architecture educational programs that will support eligibility for registration as a landscape architect.

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 J. TABLE OF EQUIVALENTS FOR EXPERIENCE IN LANDSCAPE ARCHITECTURE

22 TAC §3.191

Statutory Authority. The amendments are adopted under Texas Occupations Code §1051.202 and §1052.154.

Texas Occupations Code §1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Texas Occupations Code §1052.154 authorizes the Board to recognize and approve the landscape architecture educational programs that will support eligibility for registration as a landscape architect.

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 3. LANDSCAPE ARCHITECTS

The Texas Board of Architectural Examiners (Board) adopts amendments to §3.22, concerning Registration by Reciprocal Transfer, §3.29, concerning Registration of a Military Service Member, Military Veteran, or Military Spouse, and §3.69, concerning Continuing Education Requirements, without changes to the proposed text published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9052).

Reasoned Justification. The amendments are adopted pursuant to the requirements contained in Senate Bill 1307 (84th Texas Legislature), amending Chapter 55 of the Texas Occupations Code, relating to Licensing of Military Service Members, Military Veterans, and Military Spouses. Chapter 55 requirements have been implemented in the Board's rules, as follows. First, the heading for §3.29 has been changed to "Registration of a Military Service Member, Military Veteran, or Military Spouse." Additionally, the definitions of "active duty," "armed forces of the United States," "military service member," "military spouse" and "military veteran" have been amended to match the definitions enacted under SB 1307. Lastly, §3.29 addresses the eligibility of registration for military service members, military veterans, and military spouses, and provides for expedited consideration of applications filed by military service members, veterans, and spouses, as required under Chapter 55.

Additionally, §3.22 is amended to delete a provision granting expedited consideration of an application filed by a military spouse. A similar provision has been included in §3.29.

Finally, §3.69 is amended to allow a military service member an additional two years to complete continuing education requirements, as required under Chapter 55.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rules.

SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §3.22, §3.29

Statutory Authority. The amendments are adopted under Texas Occupations Code §§1051.202, 1051.305, and 1052.154, and implement the requirements contained in Texas Occupations Code §§55.003, 55.004 and 55.005.

Texas Occupations Code §1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Texas Occupations Code §§1052.154 and 1051.305 authorize the Board to set the eligibility requirements for registration by examination and reciprocity, respectively.

Texas Occupations Code §1051.356 requires the Board to administer continuing education programs for registrants.

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

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SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §3.69

Statutory Authority. The amendments are adopted under Texas Occupations Code §§1051.202, 1051.305, and 1052.154, and implement the requirements contained in Texas Occupations Code §§55.003, 55.004 and 55.005.

Texas Occupations Code §1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Texas Occupations Code §§1052.154 and 1051.305 authorize the Board to set the eligibility requirements for registration by examination and reciprocity, respectively.

Texas Occupations Code §1051.356 requires the Board to administer continuing education programs for registrants.

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 §3.65

The Texas Board of Architectural Examiners (Board) adopts amendments to §3.65, concerning Annual Renewal Procedure. The amendments are adopted without changes to the proposed text published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9053).

Reasoned Justification. House Bill 7 of the 84th Texas Legislature eliminated the \$200 professional fee that was previously charged to the Board's registrants. This fee was previously implemented under Texas Occupations Code §1052.0541, which has been repealed. However, §3.65 contains reference to the repealed \$200 fee. The adopted amendment to §3.65 eliminates reference to the \$200 fee, ensuring compliance between the Board's rules and the legislature's enactment.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rule.

Statutory Authority. The amendments are adopted pursuant to Texas Occupations Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design, and the repeal of Texas Occupations Code §1052.0541 under House Bill 7 (84th Texas Legislature), which eliminated the Board's statutory requirement to collect the \$200 professional fee.

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

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CHAPTER 5. REGISTERED INTERIOR DESIGNERS

The Texas Board of Architectural Examiners (Board) adopts amendments to §5.31, concerning Registration by Examination, and §5.202, concerning Description of Approved Experience for Registration by Examination, without changes to the proposed text published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9054).

Reasoned Justification. Previously, under §5.31, an interior design candidate had two options for completing the experience requirement for eligibility for registration by exam. First, the candidate could complete two or more years of approved experi-

ence credit after graduation under the table of equivalents in §5.202(b). Alternatively, the candidate could complete the Intern Development Experience Program (IDEP) administered by the National Council for Interior Design Qualification (NCIDQ). However, NCIDQ has eliminated the IDEP program for interior design candidates. Therefore, reference to the IDEP program in the Board's rules has become obsolete. For this reason, §5.31 and §5.202 are hereby amended to delete reference to the IDEP program, and require applicants to complete two years of approved experience credit under the table of equivalents.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rules.

SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §5.31

Statutory Authority. The amendments are adopted under Texas Occupations Code §1051.202 and §1053.152.

Texas Occupations Code §1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Texas Occupations Code §1053.152 authorizes the Board to establish the qualifications for the issuance or renewal of a certificate of registration as an interior designer.

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 J. TABLE OF EQUIVALENTS FOR EDUCATION AND EXPERIENCE IN INTERIOR DESIGN

22 TAC §5.202

Statutory Authority. The amendments are adopted under Texas Occupations Code §1051.202 and §1053.152.

Texas Occupations Code §1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Texas Occupations Code §1053.152 authorizes the Board to establish the qualifications for the issuance or renewal of a certificate of registration as an interior designer.

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 5. REGISTERED INTERIOR DESIGNERS

The Texas Board of Architectural Examiners (Board) adopts amendments to §5.32, concerning Registration by Reciprocal Transfer, §5.39, concerning Registration of a Military Service Member, Military Veteran, or Military Spouse, and §5.79, concerning Continuing Education Requirements. The amendments are adopted without changes to the proposed text published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9055).

Reasoned Justification. The amendments are adopted pursuant to the requirements contained in Senate Bill 1307 (84th Texas Legislature), amending Chapter 55 of the Texas Occupations Code, relating to Licensing of Military Service Members, Military Veterans, and Military Spouses. Chapter 55 requirements have been implemented in the Board's rules, as follows. First, the heading for §5.39 has been changed to "Registration of a Military Service Member, Military Veteran, or Military Spouse." Additionally, the definitions of "active duty," "armed forces of the United States," "military service member," "military spouse" and "military veteran" have been amended to match the definitions enacted under SB 1307. Lastly, §5.39 addresses the eligibility of registration for military service members, military veterans, and military spouses, and provides for expedited consideration of applications filed by military service members, veterans, and spouses, as required under Chapter 55.

Additionally, §5.32 is amended to delete a provision granting expedited consideration of an application filed by a military spouse. A similar provision has been included in §5.39.

Finally, §5.79 is amended to allow a military service member an additional two years to complete continuing education requirements, as required under Chapter 55.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rules.

SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §5.32, §5.39

Statutory Authority. The amendments are adopted under Texas Occupations Code §§1051.202, 1051.305, and 1053.154, and implement the Requirements contained in Texas Occupations Code §§55.003, 55.004, and 55.005.

Texas Occupations Code §1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Texas Occupations Code §1053.152 authorizes the Board to establish the qualifications for the issuance or renewal of a certificate of registration as an interior designer.

Texas Occupations §1051.356 requires the Board to administer continuing education programs for registrants.

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

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SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §5.79

Statutory Authority. The amendments are adopted under Texas Occupations Code §§1051.202, 1051.305, and 1053.154, and implement the Requirements contained in Texas Occupations Code §§55.003, 55.004, and 55.005.

Texas Occupations Code §1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Texas Occupations Code §1053.152 authorizes the Board to establish the qualifications for the issuance or renewal of a certificate of registration as an interior designer.

Texas Occupations §1051.356 requires the Board to administer continuing education programs for registrants.

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 §5.75

The Texas Board of Architectural Examiners (Board) adopts amendments to §5.75, concerning Annual Renewal Procedure. The amendments are adopted without changes to the proposed text published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9057).

Reasoned Justification. House Bill 7 of the 84th Texas Legislature eliminated the \$200 professional fee that was previously charged to the Board's registrants. This fee was previously implemented under Texas Occupations Code §1053.0521, which has been repealed. The Board ceased collection of the \$200 at the time the law change went into effect. However, §5.65 contains reference to the repealed \$200 fee. The adopted amendment to §5.65 eliminates reference to the \$200 fee, ensuring

compliance between the Board's rules and the legislature's enactment.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rule.

Statutory Authority. The amendments are adopted pursuant to Texas Occupations Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design, and the repeal of Texas Occupations Code §1053.0521 under House Bill 7 (84th Texas Legislature), which eliminated the Board's statutory requirement to collect the \$200 professional fee.

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

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Lance Brenton

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CHAPTER 7. ADMINISTRATION

22 TAC §7.7

The Texas Board of Architectural Examiners (Board) adopts amendments to §7.7, concerning Petitions for Rulemaking and Negotiated Rulemaking. The amendments are adopted without changes to the proposed text published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9058).

Reasoned Justification. The amendments are adopted in order to implement requirements contained in Texas Government Code §2001.021, as amended by House Bill 763 (84th Texas Legislature), relating to Petition for Adoption of Rules. Under §2001.021, an "interested person" may petition a state agency to adopt a rule. The state agency is required to adopt rules to prescribe the form for a petition for rulemaking and the procedure for its submission, consideration, and disposition. House Bill 763 amended the statute to define an "interested person" as a resident of this state; a business entity located in this state; a governmental subdivision located in this state; or a public or private organization located in this state that is not a state agency.

Previously, the Board adopted §7.7, setting out the processes for petitioning the Board to engage in rulemaking. The adopted revisions to §7.7 limit eligibility to petition for rulemaking to the persons and entities identified in House Bill 763. This rule amendment is necessary to bring the Board's rule into alignment with statutory requirements relating to petitions for adoption of rules.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rule.

Statutory Authority. The amendments are adopted under Texas Occupations Code §1051.202, and implement the requirements contained in Texas Government Code §2001.021.

Texas Occupations Code §1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Texas Government Code 2001.021 requires the Board to adopt rules to prescribe the form for a petition for rulemaking and the procedure for its submission, consideration, and disposition, and limits eligibility to petition for rulemaking to the persons and entities identified in the Board's 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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Lance Brenton

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Texas Board of Architectural Examiners

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22 TAC §7.10

The Texas Board of Architectural Examiners (Board) adopts amendments to §7.10, concerning General Fees. The amendments are adopted without changes to the proposed text published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9059).

Reasoned Justification. The amendments are adopted in order to implement requirements contained in Senate Bill 807 (84th Texas Legislature), amending Texas Occupations Code §55.09, relating to licensing and application fees for military service members, military veterans, and military spouses. Under §55.09, a state agency is required to waive license application and examination fees paid to the state for an applicant who is a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for registration. A state agency is also required to waive the license application and examination fees paid to the state for an applicant who is 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 registration in Texas.

The adopted amendments to §7.10 incorporate the required fee waivers and ensure consistency between the Board's rules and legislative enactments.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rule.

Statutory Authority. The amendments are adopted under Texas Occupations Code §§1051.202, 1051.651, 1051.705, 1052.054, 1052.154, and 1053.052 and implement the Requirements contained in Texas Occupations Code §55.009.

Texas Occupations Code §1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Texas Occupations Code §1051.651 and §1051.705, relating to architecture registration, authorize the Board to set a fee for a

board action involving an administrative expense and to set an examination fee, respectively.

Texas Occupations Code §1052.054 and §1052.154 relating to landscape architecture registration, authorize the Board to set a fee for a board action involving an administrative expense and to set an examination fee, respectively.

Texas Occupations §1053.052, relating to registered interior design registration, authorizes the Board to set a registration application fee and an examination fee.

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

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Lance Brenton

General Counsel

Texas Board of Architectural Examiners

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22 TAC §7.15

The Texas Board of Architectural Examiners (Board) adopts new §7.15, concerning Employee Training. The rule is adopted without changes to the proposed text published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9060).

Reasoned Justification. The adopted rule implements House Bill 3337 (84th Texas Legislature), which amended previous law contained in Texas Government Code Chapter 656, relating to training and education for state agency administrators and employees. Under HB 3337, a state agency may only pay an administrator's or employee's tuition expense for a course that is successfully completed at an accredited institution of higher education. Furthermore, an agency is required to adopt rules requiring that, before an administrator or employee is reimbursed for a training or education program, the executive head of the agency must authorize the tuition reimbursement payment.

As adopted, new §7.15 requires the agency to adopt policies and procedures relating to training and education of administrators and employees under Chapter 656. The rule requires the adoption of policies and procedures to address the eligibility of administrators and employees for training and education supported by the agency and the obligations assumed by administrators and employees on receiving training and education. Furthermore, the reimbursement of tuition for an administrator or employee under the adopted rule is dependent on satisfaction of eligibility requirements in the agency's policies and procedures, successful completion of a program course at an accredited institution of higher education, and authorization by the executive director.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rule.

Statutory Authority. The new section is adopted under Texas Occupations Code §1051.202 and §1051.152, and Texas Government Code §§656.044, 656.047, and 656.048.

Texas Occupations Code §1051.202 authorizes the Board to adopt reasonable rules as necessary to administer its enabling

act. Occupations Code §1051.152 authorizes the board to employ clerical and other assistants as necessary to properly perform the board's work.

Texas Government Code §656.044 authorizes a state agency to use public funds to provide training and education for its administrators and employees.

Texas Government Code §656.047 states that, for an administrator or employee of a state agency who seeks reimbursement for a training or education program offered by an institution of higher education or private or independent institution of higher education, the agency may only pay the tuition expenses for a program course successfully completed by the administrator or employee at an accredited institution of higher education. This provision is implemented under adopted §7.15(b)(2).

Texas Government Code §656.048(b) requires the Board to adopt rules requiring that the Executive Director authorize tuition reimbursement as described in §656.047. The adopted rule is necessary to implement this legislative directive.

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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Lance Brenton

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Texas Board of Architectural Examiners

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PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 107. DENTAL BOARD PROCEDURES

SUBCHAPTER A. PROCEDURES GOVERNING GRIEVANCES, HEARINGS, AND APPEALS

22 TAC §107.26

The Texas State Board of Dental Examiners adopts amendments to §107.26, relating to the failure of a Respondent to attend a hearing and the issuance of a default order. This rule is adopted without changes to the proposed text as published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8862). The rule will not be republished.

Amendments to §107.26 clarify the procedures if a party fails to attend a SOAH hearing.

The Board received no written comments regarding this amendment.

Amendments to §107.26 are adopted under Texas Occupations Code §254.001(a). The Board interprets §254.001(a) to give the Board authority to adopt rules necessary to perform its duties and ensure compliance with state law relating to the prac-

tice of dentistry to protect the public health and safety. No other statutes, articles, or codes are affected by the 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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Nycia Deal

General Counsel

State Board of Dental Examiners

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For further information, please call: (512) 475-0977

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 571. LICENSING SUBCHAPTER A. GENERAL

22 TAC §571.7

The Texas Board of Veterinary Medical Examiners adopts an amendment to §571.7, regarding Veterinary Licensing Eligibility. The amendment is adopted without changes to the proposed text as published in the November 27, 2015 issue of the *Texas Register* (40 TexReg 8436) and will not be republished.

The amendment will allow an applicant to apply for the North American Veterinary Licensing Examination through the National Board of Veterinary Medical Examiners if the applicant is within ten months of the expected graduation date, as opposed to eight months of the expected graduation date under the current rule. The amendment will also conform the Board's procedures to that of most other states.

No comments were received regarding the adoption of the amendment to the rule.

The amendment to §571.7 is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

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

Filed with the Office of the Secretary of State on March 2, 2016.

TRD-201601085

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Effective date: March 22, 2016

Proposal publication date: November 27, 2015

For further information, please call: (512) 305-7555

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.64

The Texas Board of Veterinary Medical Examiners adopts an amendment to §573.64, regarding continuing education requirements. The amendment is adopted with changes to the proposed text as published in the November 27, 2015 issue of the *Texas Register* (40 TexReg 8437).

The rule clarifies that except as provided in subsection (a)(1) of the rule, continuing education hours obtained prior to licensure in Texas may not be applied toward the required number of continuing education hours. Subsection (a)(1) provides that veterinary licensees who successfully complete the Texas State Board Licensing Examination shall receive credit for seventeen continuing education hours for the calendar year in which they were examined and licensed.

The agency received one comment regarding this rule. Paulette Andrew, DVM, commented in opposition to the proposed amendment, stating that the continuing education hours earned in the twelve months prior to the date of Texas licensure should be accepted, provided that the continuing education otherwise meets the applicable requirements.

As noted in the rule proposal's preamble, the amendment reflects the agency's current practice with regard to continuing education. The comment did not provide a rationale for deviating from the agency's existing practice of excluding continuing education obtained before Texas licensure. The Board also noted that, as stated above, a veterinary licensee who has successfully completed the Texas State Board Licensing Examination receives seventeen continuing education hours for the year in which they were examined and licensed.

The amendment to §573.64 is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter, as well as §801.307, which authorizes the Board to adopt rules to require license holders to complete continuing education courses.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.64. *Continuing Education Requirements.*

(a) Required Continuing Education Hours.

(1) Licensed Veterinarians. Seventeen (17) hours of acceptable continuing education shall be required annually for renewal of all types of Texas veterinary licenses, except as provided in subsection (b) of this section. Veterinary licensees who successfully complete the Texas State Board Licensing Examination shall receive credit for 17 continuing education hours for the calendar year in which they were examined and licensed.

(2) Licensed Equine Dental Providers. Six (6) hours of acceptable continuing education shall be required annually for renewal of Texas equine dental provider licenses.

(3) Licensed Veterinary Technicians. Ten (10) hours of acceptable continuing education shall be required annually for renewal of Texas veterinary technician licenses.

(4) A licensee shall earn the required hours of acceptable continuing education during the calendar year immediately preceding the licensee's application for license renewal. Should a licensee earn acceptable continuing education hours during the year in excess of the required hours, the licensee may carry over and apply the excess hours to the requirement for the next year. Licensees may carry over excess hours to the following year only, and may not carry over more hours than the licensee is required to earn in a calendar year.

(5) Hardship extensions may be granted by appeal to the Executive Director of the Board. The executive director shall only consider requests for a hardship extension from licensees who were prevented from completing the required continuing education hours due to circumstances beyond the licensee's control. A hardship extension generally will not be allowed due to financial hardship or lack of time due to a busy professional or personal schedule. Requests for a hardship extension must be received in writing and in the Board offices by no later than December 15. Should such extension be granted, twice the number of hours of continuing education required for a standard annual license renewal shall be obtained in the two-year period of time that includes the year of insufficiency and the year of extension. Licensees receiving a hardship extension shall maintain records of the continuing education obtained and shall file copies of these records with the Board by attaching the records to the license renewal application submitted following the extension year, or by sending them to the Board separately if the licensee submits his or her renewal application electronically (on-line).

(6) A military service member, as defined in Chapter 55, §55.001, of the Texas Occupations Code, has up to two years to complete the required continuing education requirements for each renewal year.

(7) Except as provided in subsection (a)(1) of this section, continuing education hours obtained prior to licensure in Texas may not be applied toward the required number of continuing education hours.

(b) Exemption from Continuing Education Requirements for Veterinary Licensees. A veterinary licensee is not required to obtain or report continuing education hours, provided that the veterinary licensee submits to the Board sufficient proof that during the preceding year the veterinary licensee was:

- (1) in retired status;
- (2) a veterinary intern or resident; or
- (3) out-of-country on charitable, military, or special government assignments for at least nine (9) months in a year; or
- (4) on inactive status. Veterinary licensees on inactive status may voluntarily acquire continuing education for purposes of reinstating his/her license to regular status.

(c) Make up Hours. The Board may require a licensee who does not complete the required hours of continuing education to make up the missed hours in later years. Hours required to be made up in a later year are in addition to the continuing education hours required to be completed in that year.

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-201601086

Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: March 22, 2016
Proposal publication date: November 27, 2015
For further information, please call: (512) 305-7555

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PART 37. TEXAS BOARD OF ORTHOTICS AND PROSTHETICS

CHAPTER 821. ORTHOTICS AND PROSTHETICS

22 TAC §§821.1 - 821.31

The Texas Board of Orthotics and Prosthetics (board) adopts amendments to §§821.1 - 821.31, concerning the licensure and regulation of orthotists, prosthetists, assistants, technicians, students, and orthotic and prosthetic facilities. Sections 821.1 and 821.16 have been adopted with changes to the proposed text as published in the October 9, 2015 issue of the *Texas Register* (40 TexReg 7007). Sections 821.2 - 821.15 and 821.17 - 821.31 are adopted without changes and will not be republished.

BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). Sections 821.1 - 821.31 have been reviewed and the board has determined that reasons for adopting the sections continue to exist because rules on this subject are needed to administer the program effectively.

The amendments clarify and update the rules, remove obsolete language, and ensure that the rules are consistent and continue to ensure public health and safety through the effective regulation of the profession.

The adopted rules are authorized by Occupations Code, Chapter 605, relating to the licensure and regulation of orthotists, prosthetists, assistants, technicians, students, and orthotic and prosthetic facilities.

SECTION-BY-SECTION SUMMARY

Amendments to §821.1 update and align the description of the rules with the current rule headings.

Amendments to §821.2 renumber the section as necessary; update and clarify definitions; add definitions for education and off-the-shelf; distinguish indirect supervision provided to licensed students in residency from supervision provided to licensed assistants; and remove the requirement that the safety manager of an accredited facility be a licensee of the board.

Amendments to §821.3 revise the section title and remove an obsolete requirement for interim written reports by committees.

Amendments to §821.4 correct a reference for facility from the plural to the singular, and remove an obsolete reference to up-grading temporary licenses.

Amendments to §821.5 specify the World Education Service (WES) as the acceptable source for foreign transcript evaluations; correct an internal reference; and remove obsolete language related to the contents of the initial application form.

The amendment to §821.6 removes obsolete language related to the issuance of student registrations.

Amendments to §821.7 remove obsolete and contradictory language regarding examination approval and align the rules with current utilization of national examinations.

Amendments to §821.8 clarify the title; update and modify the requirements for licensure to provide two clear paths for uniquely qualified applicants; and correct internal references and a typographical error.

Amendments to §821.9 update the rules to reflect the current documentation applicants may submit as proof of completion of clinical residency.

Amendments to §821.10 update the title of the rule section; modify the educational requirements for initial licensure to be congruent with national standards; add a new requirement that prospective assistants apply and receive approval from the board prior to beginning the clinical residency, in order to ensure that the applicant is eligible for licensure and the required 1,000 hours are completed under the supervision of a current licensee as required by board rules; and increase the amount of time allowed for the completion of the residency for assistants from six months to one year.

The amendment to §821.11 clarifies that registration as a technician is voluntary and not required by state law, and does not authorize a registered individual to provide hands-on care to patients.

Amendments to §821.12 remove obsolete language related to examination approval while holding a temporary license.

Amendments to §821.13 reorganize existing language for clarity, remove obsolete references to clinical experience and residency hours, delete a duplicative provision related to the term of the license, which exists in another section, and remove a prohibition on the board issuing more than one student registration in the same specialty.

The amendments to §821.14 remove obsolete wording to align the rules with current utilization of national examinations and reflect the current process for issuing temporary licenses.

The amendments to §821.15 clarify that a facility must apply for accreditation prior to providing orthotic or prosthetic services, correct a grammatical error, and impose a new requirement that accredited facilities post their operating hours, including any temporary periods of closure, along with emergency contact information for patients to reach the facility.

The amendments to §821.16 remove obsolete wording and clarify that a student registration is required in order to complete a clinical residency in orthotics or prosthetics in Texas.

Amendments to §821.17 remove an obsolete requirement for signatures, since licensees may now apply for renewal online, and delete unnecessary wording related to the operation of an accredited facility with an expired accreditation.

Amendments to §821.18 clarify that the board shall provide notice only if the board proposes disciplinary action for failure to complete the required continuing education.

The amendment to §821.19 revises the wording related to the timeline for address changes for clarity.

The amendment to §821.20 deletes an obsolete reference.

Amendments to §821.21 update a statutory reference and correct a grammatical error.

The amendment to §821.22 modifies the wording of the rule for clarity.

The amendment to §821.23 corrects the punctuation of the rule.

Amendments to §821.24 align the rules with §821.2(17) and clarify that a facility accreditation may be surrendered.

The amendment to §821.25 corrects a reference from the singular to the plural.

The amendment to §821.26 corrects a grammatical error.

The amendment to §821.27 removes an obsolete reference to align the rules with current utilization of national examinations.

The amendment to §821.28 clarifies the intent and wording required on the consumer notification sign.

The amendment to §821.29 corrects a typographical error in a statutory reference.

The amendment to §821.30 corrects a typographical error to ensure that internal references are consistent.

The amendment to §821.31 corrects a typographical error where a word should have been capitalized.

COMMENTS

The board has reviewed and accepted the comments received regarding the proposed rules during the comment period. The commenters were associations, including the following: the Texas Medical Association and the Texas Orthopaedic Association. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments.

Comment: The Texas Medical Association and the Texas Orthopaedic Association recommended that the phrase "or a licensed physician" be retained at §821.2(3).

Response: The board disagrees, because the board does not have legal authority to allow licensed assistants to be supervised by any professional other than a licensed orthotist or prosthetist, as provided by Occupations Code, §605.255(b). No change was made to the rule as a result of this comment.

Comment: The Texas Medical Association and the Texas Orthopaedic Association requested that language be added to clarify that other persons who perform minimal self-adjustment on off-the-shelf orthotic devices are not engaged in "assistant patient care services" in §821.2(3).

Response: The board disagrees. The definition of assistant patient care services, both currently and once the proposed language is adopted, clearly specifies what an assistant licensed by the board can do, and does not in any way restrict a patient or a patient's personal caregiver from touching or adjusting a patient's orthosis. The board does not regulate any other persons or entities who legally supply or adjust devices in accordance with other Texas laws or rules, and therefore cannot include "supplier of the device" in this regulatory definition that applies to licensed assistants. No change was made to the rule as a result of this comment.

Comment: The Texas Medical Association and the Texas Orthopaedic Association requested that a definition for minimal self-adjustment be added to the rules and suggested specific

language that referenced certified orthotists or individuals with specialized training.

Response: The board disagrees, because the board's authority extends to the licensing and regulation of only those license types established in Occupations Code, Chapter 605. The board lacks authority to grant any additional rights to persons who possess certifications, or persons with specialized training other than that required to obtain or renew a license issued by the board. No change was made to the rule as a result of this comment.

Comment: The Texas Medical Association and the Texas Orthopaedic Association requested that the definition for "Off-The-Shelf" orthotic devices in §821.2(27) be revised to include language stating that these devices are not included within the categories of "custom-fabricated" and "custom-fitted" devices.

Response: The board disagrees because the proposed language could be misleading if read out of context. No change was made to the rule as a result of this comment.

Concerning §821.1(b) and §821.16(g)(5)(C), the board made revisions to these sections to provide correct punctuation and grammar, which improve the flow, accuracy and readability of the rules.

STATUTORY AUTHORITY

The amendments are authorized by Occupations Code, §605.154, which authorizes the board to adopt rules necessary for the performance of the board's duties. Review of the sections implements Government Code, §2001.039.

§821.1. Introduction.

(a) Purpose. This chapter implements the Texas Orthotics and Prosthetics Act, Texas Occupations Code, Chapter 605, concerning prosthetic and orthotic regulation.

(b) Content. This chapter covers definitions; operation of the board; fees; general application procedures; general licensing procedures; examinations for licensure as a prosthetist, orthotist, or prosthetist/orthotist; acquiring professional licensure as a uniquely qualified person; licensing by examination; assistant license; technician registration; student registration; temporary license; upgrading a student registration; accreditation of prosthetic and orthotic facilities; standards, guidelines, and procedures for a professional clinical residency; license renewal; continuing education; change of name and address; complaints; professional standard and disciplinary provisions; licensing persons with criminal backgrounds; default orders; surrender of license; suspension of license under the Family Code; civil penalty; program accessibility; consumer notification; petition for the adoption of a rule, criminal history evaluation letter, and licensing of military service members, military veterans, and military spouses.

§821.16. Standards, Guidelines, and Procedures for a Professional Clinical Residency.

(a) General. The board will accept a professional clinical residency having standards that are equivalent to or exceed NCOPE standards and those set forth in this chapter.

(b) Clinical residency programs must be equivalent to current NCOPE standards.

(c) Residency Conditions. The resident's involvement in patient care must meet current NCOPE standards.

(d) Supervision of clinical resident. A clinical resident must be directly involved in providing patient care, under the supervision of

a Texas licensed practitioner whose license is in the same discipline in which residency is being completed.

(e) Written description of program. A professional clinical residency must provide the residents with a written description of the educational program, including the scope and duration of assignments to other facilities, if part of the clinical residency. The written description of the program must be equivalent to NCOPE requirements and must be addressed in the written description:

- (1) the term of residency;
- (2) written job description;
- (3) pertinent policies and procedures;
- (4) safety requirements;
- (5) patient confidentiality;
- (6) liability and malpractice insurance;
- (7) expectations;
- (8) limitations and restrictions of residency; and
- (9) the name of the Texas licensed practitioner who is designated as the program director.

(f) Facility requirements. A facility must:

- (1) be accredited by the board or be exempt as described in §821.15 of this title (relating to Accreditation of Prosthetic and Orthotic Facilities);
- (2) have the resources and adequate facilities for residents to fulfill their education and patient care responsibilities; and
- (3) have resources and adequate facilities for residents to develop proficiency in laboratory skills in prosthetic and orthotic fabrication; and
- (4) meet current NCOPE requirements.

(g) Responsibilities of the program director.

- (1) Each program director must meet the current NCOPE requirements.
- (2) Prosthetic and orthotic supervising licensee-to-resident ratio shall not exceed one Texas licensed practitioner to two residents.
- (3) The program director shall maintain documentation of residents' agreements.
- (4) The program director shall supervise residents during patient care. Direct supervision of critical care events is required. Indirect supervision of clinical procedures, except critical care events, is allowed throughout the residency. The supervision must be provided by a practitioner licensed in Texas in the discipline being taught. Overall assurance of quality patient care is the ultimate responsibility of the supervising practitioner.

(5) Evaluation of a resident's ability to assume graded and increasing responsibility for patient care must be completed quarterly. This determination is the program director's responsibility, in consultation with members of the teaching staff. The facility administration shall assure that, through the director and staff, each program:

- (A) evaluates the knowledge, skills and professional growth of its residents, at least quarterly;
- (B) provides to residents a written assessment of their performance quarterly; and

(C) maintains written evaluations on forms prescribed by the board, as a part of the performance record for each resident. The performance record of each resident shall be available to that resident.

(h) Resident responsibilities and qualifications.

(1) The resident shall be responsible for participating in safe, effective and compassionate patient care under supervision commensurate with his or her level of advancement and responsibility.

(2) The resident must hold a student registration.

(i) Residency objectives.

(1) Clinical assessment. Upon completion of a residency, a person must be proficient in current NCOPE requirements, including clinical assessment skills for an individual requiring prosthetic and/or orthotic services as displayed by the ability to:

(A) obtain a history of the patient to determine the need for a specific device by:

- (i) interviewing the patient;
- (ii) interviewing others, if necessary; and/or
- (iii) reviewing available records;

(B) observe gait, coordination, present device if available and other physical characteristics to supplement patient history and physical examination;

(C) examine the patient to determine skin condition, joint range of motion and muscle strength;

(D) assess the specific needs of individual patients by integrating the information obtained from history, examination and observation;

(E) discuss with the patient his or her needs and expectations;

(F) provide information to the patient, family and involved health professionals regarding a device's potential advantages and disadvantages to assure understanding of the treatment plan and cooperation of the individuals involved;

(G) develop a treatment protocol for the specific patient by review of data obtained to determine a specific device recommendation and plan for its use; and

(H) obtain and accurately record appropriate measurements and other data from the patient to design the recommended device.

(2) Patient management. Upon completion of a residency, a person must be proficient in patient management skills under current NCOPE requirements for prosthetic and/or orthotic patients as displayed by the ability to:

(A) measure a patient by using proper instruments and tests. Compile data to be used in device design and fabrication;

(B) manipulate the patient's limbs to provide correction, position or deformation to obtain the most appropriate information;

(C) replicate the patient's body or limbs to obtain an accurate anatomical impression to be used in fabricating a prosthesis and orthosis;

(D) achieve optimum comfort, function and cosmesis by using proper fitting techniques;

(E) visually evaluate if a patient's gait has achieved optimum prosthetic and/or orthotic function;

(F) achieve optimum alignment and function of a patient's prosthesis and/or orthosis by evaluating the sagittal, transverse and coronal planes;

(G) maintain proper documentation of the patient's treatment history through established records keeping techniques; and

(H) provide ongoing patient care to assure continued proper fit and function of the prosthesis and orthosis.

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 March 2, 2016.

TRD-201601082

Rebecca Brou

Chair

Texas Board of Orthotics and Prosthetics

Effective date: March 22, 2016

Proposal publication date: October 9, 2015

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

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 61. CHRONIC DISEASES

SUBCHAPTER A. KIDNEY HEALTH CARE

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§61.1 - 61.5 and 61.7 - 61.10, new §61.11, and repeal of §61.11, concerning the Kidney Health Care (KHC) Program (program). The amendments to §§61.1 - 61.5 and 61.7 - 61.10; new §61.11 and the repeal of §61.11 are adopted without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7561) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The KHC Program serves Texas residents with an end-stage renal disease (ESRD) diagnosis, who are not Medicaid eligible, and have a gross income of less than \$60,000 annually. The program provides Medicare Part D premium payment, deductible and coinsurance benefits; limited drug benefits; travel reimbursement for ESRD related travel up to 13 round trips monthly; and allowable dialysis and access surgery benefits.

The KHC rules implement Texas Health and Safety Code, Chapter 42, Kidney Health Care, and set guidelines necessary for the administration of the program. The amendments to §§61.1 - 61.5 and 61.7 - 61.10, repeal of §61.11, and new §61.11 are necessary to strengthen and clarify understanding of the program, and improve flow, accuracy, and clarity of the rules.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 61.1 - 61.5 and 61.7 - 61.11 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because

rules on this subject are required to comply with statutory requirements and to effectively operate the program.

SECTION-BY-SECTION SUMMARY

Amendments to §61.1 update existing language for accuracy and clarity by adding the term "authorized entities" and replacing the acronym "KHC" with the word "program."

Amendments to §61.2 revise existing definitions, remove unnecessary definitions, and add new definitions. New terms used in this subchapter include authorized entity; enrolled provider; incomplete claim; resubmitted claim; and veteran's programs.

Amendments to §61.3 update the program requirement to align with eligibility requirements of the Social Security Administration and replace the acronym "KHC" with the word "program."

Amendments to §61.4 add language which stipulates that applications must be submitted by an authorized entity. The notary requirement was removed to streamline the application process.

Amendments to §61.5 replace the term "drug products" with "supplies" to accurately reflect program benefits; add language that better describes benefit limitations; and replace the acronym "KHC" with the word "program."

Section 61.6 was moved into new 1 TAC §392.605, concerning Kidney Health Care Provider Requirements and Effective Dates, to comply with the consolidation of contract and procurement rules under the Health and Human Services Commission. Section 392.605 defines some words and terms used in Subchapter G (relating to Contracting with Providers for Certain DSHS Programs), and establishes certain requirements for providers to qualify as providers for the program. This section also establishes effective dates for all enrolled provider agreements and pharmacy agreements.

Amendments to §61.7 add language that specifies who may file claims; remove reference to the Automated System for Kidney Information Tracking to allow for an updated software application; and replace the acronym "KHC" with the word "program." Amendments in this section also add new language that the program will not pay claims for medical benefits until the provider has entered into a fully executed provider agreement.

Amendments to §61.8 clarify existing language by explaining that claims that do not meet the filing deadlines will be denied; and replacing the term "approved" provider with "enrolled" provider for consistency throughout the subchapter.

Amendments to §61.9 clarify existing language related to client and provider rights and responsibilities; add new language to outline responsibilities for authorized entities; and replace the acronym "KHC" with the word "program."

Amendments to §61.10 clarify existing language by specifying that clients must reapply for benefits when program eligibility is terminated, and by replacing the acronym "KHC" with the word "program."

New §61.11 clarifies the rights of appeal for applicants, clients, and providers by outlining the circumstances for which an administrative review may be requested.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services, General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

25 TAC §§61.1 - 61.5, 61.7 - 61.11

STATUTORY AUTHORITY

The amendments and new section are authorized by Health and Safety Code, §42.003(c), which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules necessary to carry out Chapter 42 and to provide adequate kidney care and treatment for citizens of this state; and by Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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

Filed with the Office of the Secretary of State on March 7, 2016.

TRD-201601152

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: March 27, 2016

Proposal publication date: October 30, 2015

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



25 TAC §61.11

STATUTORY AUTHORITY

The repeal is authorized by Health and Safety Code, §42.003(c), which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules necessary to carry out Chapter 42 and to provide adequate kidney care and treatment for citizens of this state; and by Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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

Filed with the Office of the Secretary of State on March 7, 2016.

TRD-201601153

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: March 27, 2016

Proposal publication date: October 30, 2015

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



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER L. REPORTING REQUIREMENTS FOR LIABILITY INSURANCE UNDER THE INSURANCE CODE, ARTICLE 1.24A AND ARTICLE 1.24B

28 TAC §§5.9201, 5.9202, 5.9204

The Texas Department of Insurance adopts the repeal of 28 TAC Chapter 5, Subchapter L, concerning Reporting Requirements for Liability Insurance Under the Insurance Code, Article 1.24A and Article 1.24B, without changes from the proposal that was published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9071). The repeal conforms the rules to changes made by SB 784, 84th Legislature, Regular Session (2015).

EXPLANATION. SB 784 repeals Insurance Code Chapter 38, Subchapter D, eliminating the data collection on closed claims and the requirement for TDI to compile an annual closed claim report. SB 784 also deletes the references to Subchapter D in Insurance Code §§2206.002(b), 2207.002(b), 2208.002(b), and 2212.053(a).

The repeal of Chapter 5, Subchapter L, deletes TDI's annual and reconciliation closed claim liability insurance data calls, including associated quarterly report forms and instructions.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. There were no comments.

STATUTORY AUTHORITY. TDI adopts the repeal of Chapter 5, Subchapter L, under Insurance Code Chapter 38, Subchapter D, which eliminates the requirement for data calls and the legislative report on liability insurance for closed claims reports. SB 784 also deletes the references to Subchapter D in Insurance Code §§2206.002(b), 2207.002(b), 2208.002(b), and 2212.053(a). 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 the state.

CROSS-REFERENCE TO STATUTE. The repeal implements the repeal of Insurance Code Chapter 38, Subchapter D.

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 February 29, 2016.

TRD-201601022

Norma Garcia

General Counsel

Texas Department of Insurance

Effective date: March 20, 2016

Proposal publication date: December 18, 2015

For further information, please call: (512) 676-6584

CHAPTER 19. AGENTS' LICENSING

The Texas Department of Insurance adopts amendments to 28 TAC Chapter 19, Subchapter R, Utilization Reviews For Health Care Provided under a Health Benefit Plan or Health Insurance Policy, §19.1714, Regulatory Requirements Subsequent to Certification or Registration; and Subchapter U, Utilization Reviews for Health Care Provided under Workers' Compensation Insurance Coverage, §19.2014, Regulatory Requirements Subsequent to Certification or Registration, without changes from the proposal that was published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9073). The amendments conform the rules to changes made by SB 784, 84th Legislature, Regular Session (2015).

EXPLANATION. SB 784 repealed Insurance Code §4201.204(c) requiring utilization review agents to submit to the commissioner summary reports of all complaints. Title 28 TAC §19.1714 and §19.2014 expanded the reporting requirement to include adverse determinations and appeals of adverse determinations. The amendments to §19.1714(a) - (c) and §19.2014(a) - (c) remove the requirement for the summary reports.

Section 19.1714 and §19.2014 are also amended to increase the number of days that a utilization review agent has to respond to a TDI inquiry from 10 to 15 days, to comply with SB 183, 83rd Legislature, Regular Session (2013), which amended Insurance Code §38.001.

The amendments also include nonsubstantive changes to conform the text to current agency style.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. There were no comments.

SUBCHAPTER R. UTILIZATION REVIEWS FOR HEALTH CARE PROVIDED UNDER A HEALTH BENEFIT PLAN OR HEALTH INSURANCE POLICY

28 TAC §19.1714

STATUTORY AUTHORITY. TDI adopts the amendments to §19.1714 under Insurance Code §4201.204(c), which was repealed, eliminating the requirement for utilization review agents to submit to the commissioner summary reports. Insurance Code §38.001 allows 15 days for a utilization review agent to respond to TDI. 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 the state.

CROSS-REFERENCE TO STATUTE. The amendments implement the repeal of Insurance Code §4201.204(c).

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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Norma Garcia
General Counsel
Texas Department of Insurance
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Proposal publication date: December 18, 2015
For further information, please call: (512) 676-6584



SUBCHAPTER U. UTILIZATION REVIEWS FOR HEALTH CARE PROVIDED UNDER WORKERS' COMPENSATION INSURANCE COVERAGE

28 TAC §19.2014

STATUTORY AUTHORITY. TDI adopts the amendments to §19.2014 under Insurance Code §4201.204(c), which was repealed, eliminating the requirement for utilization review agents to submit to the commissioner summary reports. Insurance Code §38.001 allows 15 days for a utilization review agent to respond to TDI. 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 the state.

CROSS-REFERENCE TO STATUTE. The amendments implement the repeal of Insurance Code §4201.204(c).

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 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 35. EMERGENCY AND TEMPORARY ORDERS AND PERMITS; TEMPORARY SUSPENSION OR AMENDMENT OF PERMIT CONDITIONS

SUBCHAPTER C. GENERAL PROVISIONS

30 TAC §35.29

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §35.29.

The amendment is adopted *without change* to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9484) and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

This rulemaking is adopted to implement Senate Bill (SB) 1267 adopted by the 84th Texas Legislature (2015), with an effective date of September 1, 2015. SB 1267 amends the Texas Administrative Procedure Act (APA), codified in Texas Government Code, Chapter 2001, which is applicable to all state agencies. SB 1267 revises and creates numerous requirements related to notice of contested case hearings (CCHs) and agency decisions, signature and timeliness of agency decisions, presumption of the date that notice of an agency decision is received, motions for rehearing regarding agency decisions, and the procedures for judicial review of agency decisions. Rulemaking implementing SB 1267, Sections 4, 6, 7, and 9 was adopted by the commission on December 9, 2015, in 30 Texas Administrative Code (TAC) Chapter 1, Purpose of Rules, General Provisions; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 70, Enforcement; and Chapter 80, Contested Case Hearings (Rule Project No. 2015-018-080-LS).

In corresponding rulemaking published in this issue of the *Texas Register*, the commission also adopts the amendment to §55.255 and the repeal of §80.271, which will complete the rulemaking necessary to implement SB 1267.

Section Discussion

The commission adopts an updated a cross-reference in §35.29 from §80.271, which is concurrently adopted for repeal, to §80.272. Section 80.272, was amended by the commission on December 9, 2015, and applies to motions for rehearing for CCHs regarding permit applications.

In addition to the adopted amendment, various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally not specifically discussed in this preamble.

Final Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendment to §35.29 is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Rather, it is procedural in nature and implements changes made to the APA in SB 1267 by revising a cross-reference in a commission rule regarding a CCH for emergency and temporary order applications.

The rulemaking is procedural in nature and does not affect in a material way the economy, a sector of the economy, productiv-

ity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the adopted amendment to §35.29 is procedural in nature and implements changes made to the APA in SB 1267 regarding commission action on requests for CCH. This adopted rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was specifically developed to meet the requirements of the law described in the Statutory Authority section of this rulemaking.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The adopted amendment revises a rule regarding commission action on requests for CCH and is procedural in nature. The primary purpose of the adopted rulemaking is to update a cross-reference to a rule that implemented changes made to the APA in SB 1267. Promulgation and enforcement of the adopted rulemaking will not burden private real property. The adopted rule does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5).

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will the amendment affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received on the CMP.

Public Comment

The commission held a public hearing on January 26, 2016. The comment period closed on January 29, 2016. The commission received no comments on the proposed rulemaking.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which

establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, Chapter 5, Subchapter L, concerning Emergency and Temporary Orders, which authorizes the commission to issue and hold hearings regarding emergency and temporary orders. Additional relevant sections are Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; and Texas Government Code, §2001.006, concerning Actions Preparatory to Implementation of Statute or Rule, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; Texas Government Code, §2001.142, concerning Notification of Decisions and Orders, which prescribes requirements for the notification of decisions and orders of a state agency; Texas Government Code, §2001.143, concerning Time of Decision, which concerns when a decision in a contested case becomes final; Texas Government Code, §2001.144, concerning Decisions or Orders; When Final, which provides the time at which decisions in contested cases are final; and Texas Government Code, §2001.146, concerning Motions for Rehearing: Procedures, which authorizes the procedures for motions for rehearing filed with state agencies.

The adopted amendment implements TWC, §5.504; Texas Government Code, §2001.004; and Senate Bill 1267 (84th Texas Legislature, 2015).

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

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-2141

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CHAPTER 55. REQUESTS FOR RECONSIDERATION AND CONTESTED CASE HEARINGS; PUBLIC COMMENT

SUBCHAPTER G. REQUESTS FOR CONTESTED CASE HEARING AND PUBLIC COMMENT ON CERTAIN APPLICATIONS

30 TAC §55.255

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §55.255.

The amendment is adopted *without change* to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9491) and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

This rulemaking is adopted to implement Senate Bill (SB) 1267 adopted by the 84th Texas Legislature (2015), with an effective date of September 1, 2015. SB 1267 amends the Texas Administrative Procedure Act (APA), codified in Texas Government Code, Chapter 2001, which is applicable to all state agencies. SB 1267 revises and creates numerous requirements related to notice of contested case hearings (CCHs) and agency decisions, signature and timeliness of agency decisions, presumption of the date that notice of an agency decision is received, motions for rehearing regarding agency decisions, and the procedures for judicial review of agency decisions. Rulemaking implementing SB 1267, Sections 4, 6, 7, and 9 was adopted by the commission on December 9, 2015, in 30 Texas Administrative Code (TAC) Chapter 1, Purpose of Rules, General Provisions; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 70, Enforcement; and Chapter 80, Contested Case Hearings (Rule Project No. 2015-018-080-LS).

In corresponding rulemaking published in this issue of the *Texas Register*, the commission adopts the amendment to §35.29 and to repeal §80.271, which will complete the rulemaking necessary to implement SB 1267.

Section Discussion

§55.255, Commission Action on Hearing Request

The adopted amendment to §55.255(e) is to implement SB 1267, Section 9. SB 1267, Section 9, which amends Texas Government Code, §2001.146, changes the date for filing a motion for rehearing from within 20 days after notification to not later than the 25 days after the commission's decision or order is signed. However, the deadline may be extended under prescribed sections of the APA. On December 9, 2015, the commission adopted similar changes to §55.211(f) and §80.272.

In addition to the adopted amendment, the adoption also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms and rule structure. These changes are non-substantive and generally not specifically discussed in this preamble.

Final Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendment to §55.255 is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Rather, it is procedural in nature and implements changes made to the APA in SB 1267 by revising a rule regarding commission action on requests for CCH.

The rulemaking is procedural in nature and does not affect in a material way the economy, a sector of the economy, productiv-

ity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the adopted amendment to §55.255 is procedural in nature and implements changes made to the APA in SB 1267 regarding commission action on requests for CCH. This adopted rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was specifically developed to meet the requirements of the law described in the Statutory Authority section of this rulemaking.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The adopted amendment revises a rule regarding commission action on requests for CCH and is procedural in nature. The primary purpose of the adopted rulemaking is to implement changes made to the APA in SB 1267. Promulgation and enforcement of the adopted rulemaking will not burden private real property. The adopted rule does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5).

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will the amendment affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received on the CMP.

Public Comment

The commission held a public hearing on January 26, 2016. The comment period closed on January 29, 2016. The commission received no comments on the proposed rulemaking.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC,

§5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; TWC, §5.115, concerning Persons Affected in Commission Hearings; Notice of Application, which requires the commission to determine affected persons and provide certain notice of applications; TWC, §11.132, concerning Notice, which provides opportunity for contested case hearing on water rights applications; TWC, §11.134, concerning Action on Application, which authorizes the commission to grant or deny an application for water rights; TWC, §49.011, concerning Notice Applicable to Creation of a District by the Commission, which authorizes the commission to act on districts applications under TWC, Chapters 36, 50, 51, 54, 55, 58, 65, and 66; and Texas Health and Safety Code, §401.114, concerning Notice and Hearing, which authorizes the commission to grant or renew a radioactive waste disposal license. Additional relevant sections are Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; Texas Government Code, §2001.006, concerning Actions Preparatory to Implementation of Statute or Rule, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.146, concerning Motions for Rehearing: Procedures, which authorizes the procedures for motions for rehearing filed with state agencies.

The adopted amendment implements Texas Government Code, §2001.146, and Senate Bill 1267 (84th Texas Legislature, 2015).

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 80. CONTESTED CASE HEARINGS SUBCHAPTER F. POST HEARING PROCEDURES

30 TAC §80.271

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of §80.271.

The proposed repeal was published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9494).

Background and Summary of the Factual Basis for the Adopted Rule.

This rulemaking is adopted to implement Senate Bill (SB) 1267 adopted by the 84th Texas Legislature (2015), with an effective date of September 1, 2015. SB 1267 amends the Texas Administrative Procedure Act (APA), codified in Texas Government Code, Chapter 2001, which is applicable to all state agencies. SB 1267 revises and creates numerous requirements related to notice of contested case hearings (CCHs) and agency decisions, signature and timeliness of agency decisions, presumption of the date that notice of an agency decision is received, motions for rehearing regarding agency decisions, and the procedures for judicial review of agency decisions. Rulemaking implementing SB 1267, Sections 4, 6, 7, and 9 was adopted by the commission on December 9, 2015, in 30 Texas Administrative Code (TAC) Chapter 1, Purpose of Rules, General Provisions; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 70, Enforcement; and Chapter 80, Contested Case Hearings (Rule Project No. 2015-018-080-LS). The applicable rule, §80.272, was amended by the commission on December 9, 2015, and applies to motions for rehearing for CCHs regarding permit applications.

In corresponding rulemaking published in this issue of the *Texas Register*, the commission adopts the amendments to §35.29 and §55.255, which will complete the rulemaking necessary to implement SB 1267.

Section Discussion

Section 80.271 is adopted for repeal because the changes adopted by the commission on December 9, 2015, to §80.272 make §80.271 obsolete.

Final Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted repeal of §80.271 is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Rather, §80.271 is obsolete.

The rulemaking is procedural in nature and does not affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the adopted repeal of §80.271 is necessary to complete the implementation of SB 1267 by removing an ob-

sole rule. The repealed rule, §80.271, is procedural in nature and does not directly impact the cost of CCHs. This adopted rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was specifically developed to meet the requirements of the law described in the Statutory Authority section of this rulemaking.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The primary purpose of the adopted rulemaking is to repeal an obsolete rule, §80.271. This is necessary to complete the implementation of SB 1267. Section 80.271 is procedural in nature and does not directly impact the cost of CCHs. Promulgation and enforcement of the adopted rulemaking will not burden private real property. The adopted repeal of §80.271 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5).

Consistency with the Coastal Management Program

The commission reviewed the adopted repeal of §80.271 and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will the repeal affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule repeal is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received on the CMP.

Public Comment

The commission held a public hearing on January 26, 2016. The comment period closed on January 29, 2016. The commission received no comments on the proposed rulemaking.

Statutory Authority

The repeal is adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. Additional relevant sections are Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; and Texas Government Code, §2001.006, concerning Actions Preparatory to Implementation of Statute or Rule, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; Texas Government Code, §2001.142, concerning Notification of Decisions and Orders, which prescribes requirements for the notification of decisions and orders of a state agency; Texas Government Code, §2001.143, concerning Time of Decision, which concerns when a decision in a contested case becomes final; Texas Government Code, §2001.144, concerning Decisions or Orders; When Final, which provides the time at which decisions in contested cases are final; and Texas Government Code, §2001.146, concerning Motions for Rehearing: Procedures, which authorizes the procedures for motions for rehearing filed with state agencies.

The adopted repeal implements Texas Government Code, §2001.004, and Senate Bill 1267 (84th Texas Legislature, 2015).

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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