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# TEXAS REGISTER

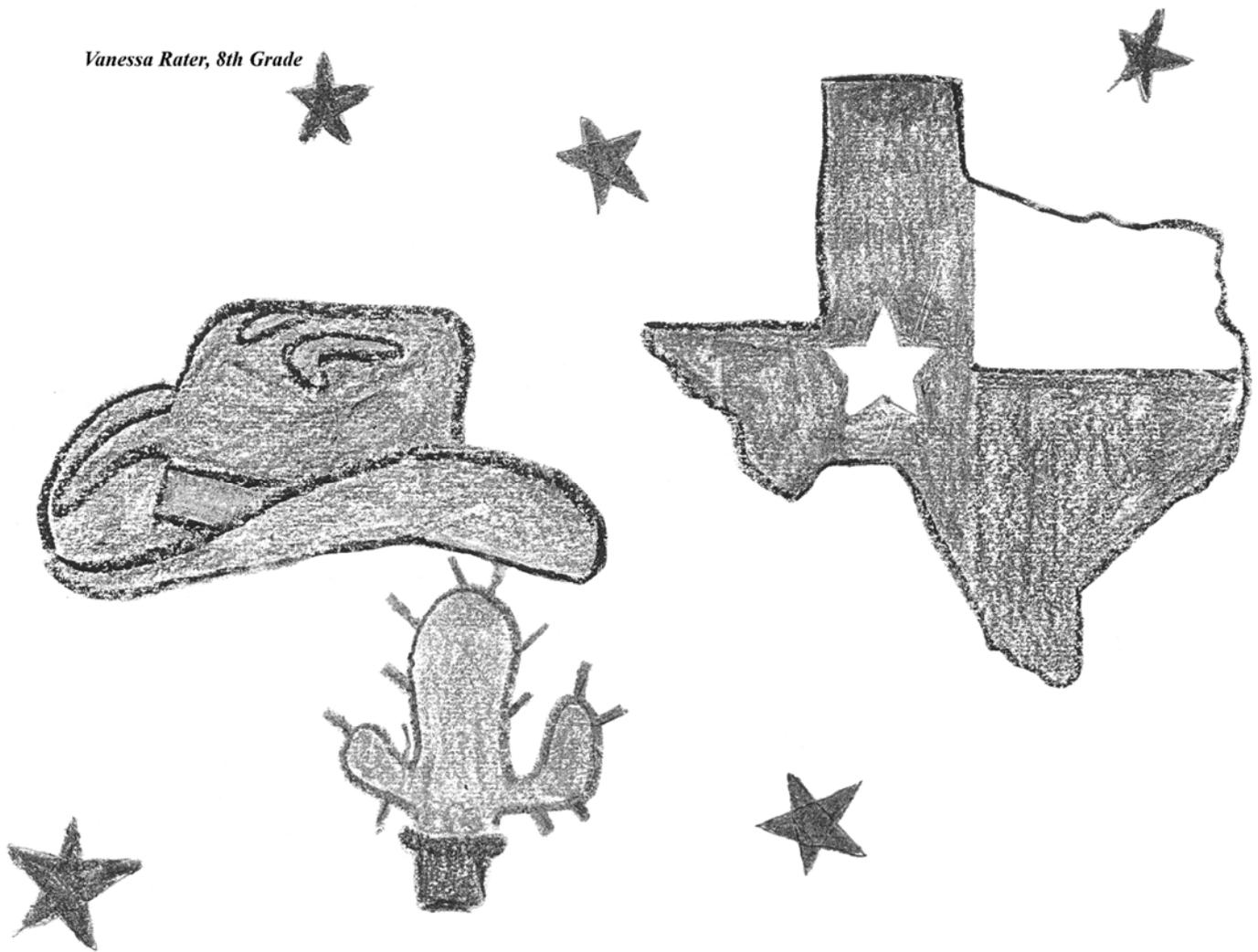
*Volume 41 Number 15*

*April 8, 2016*

*Pages 2547 - 2624*

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*Vanessa Rater, 8th Grade*



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# THE GOVERNOR

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

## Appointments

### Appointments for March 17, 2016

Appointed to the Adjutant General of Texas for a term to expire February 1, 2018, John F. Nichols of Spring Branch (General Nichols is being reappointed).

### Appointments for March 18, 2016

Appointed to the Drought Preparedness Council, for a term at the pleasure of the Governor, Nicole Ryf of Austin.

Appointed to the Governing Board of the Texas Civil Commitment Office for a term to expire February 1, 2017, Rona K. Stratton Gouyton of Fort Worth.

Appointed to the Governing Board of the Texas Civil Commitment Office for a term to expire February 1, 2017, Kathryn E. "Katie" McClure of Kingwood (Ms. McClure is being reappointed).

Appointed to the Governing Board of the Texas Civil Commitment Office for a term to expire February 1, 2018, Jose L. Aliseda, Jr. of Beeville.

Appointed to the Governing Board of the Texas Civil Commitment Office for a term to expire February 1, 2018, Roberto "Robert" Dominguez of Elsa (Chief Dominguez is being reappointed).

Appointed to the Governing Board of the Texas Civil Commitment Office for a term to expire February 1, 2018, Elizabeth C. "Christy" Jack of Fort Worth (Ms. Jack is being reappointed).

Appointed to the Board of Pilot Commissioners for Galveston County Ports for a term to expire February 1, 2020, Arden C. "Trey" Hill, III of Friendswood (replacing Vandy Anderson of Galveston whose term expired).

Appointed to the Board of Pilot Commissioners for Galveston County Ports for a term to expire February 1, 2020, Kelly K. Lovell of Friendswood (replacing Linda R. Rounds of Galveston whose term expired).

### Appointments for March 21, 2016

Designating Stuart W. Stedman of Houston as vice chairman of the Texas Higher Education Coordinating Board for a term at the pleasure of the Governor.

### Appointments for March 22, 2016

Appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2017, Will "Alston" Beinhorn of Catarina (replacing James "Jim" Marmion, III of Asherton who resigned).

Appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2017, Mary E. "Mary Beth" Delano of Corpus Christi (replacing Karen Olson Bonner of Corpus Christi who resigned).

Appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2019, Jesse B. "Trace" Burton, III of San Antonio (replacing Emily Stroup of San Antonio who resigned).

Appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2019, Dan S. Leyendecker of Corpus Christi (replacing Lynn E. Haueter of Corpus Christi who resigned).

### Appointments for March 23, 2016

Appointed to the Sulphur River Basin Authority Board of Directors for a term to expire February 1, 2021, Bret A. McCoy of Omaha (replacing Kirby Hollingsworth of Mount Vernon whose term expired).

Appointed to the Sulphur River Basin Authority Board of Directors for a term to expire February 1, 2021, Michael R. "Mike" Sandefur of Texarkana (replacing Borden Ezra Bell, Jr. of Texarkana whose term expired).

Appointed to the Sulphur River Basin Authority Board of Directors for a term to expire February 1, 2021, Catherine A. "Katie" Stedman of Mount Pleasant (replacing David Thomas Neeley of Mount Pleasant whose term expired).

Appointed to the Upper Guadalupe River Authority for a term to expire February 1, 2019, Aaron C. Bulkley of Hunt (replacing Claudell Kercheville of Kerrville who resigned).

### Appointments for March 24, 2016

Pursuant to HB 2, 84th Legislature, Regular Session, appointed to the Technical Advisory Committee to the Bureau of Economic Geology, for a term at the pleasure of the Governor, Alfred D. "Dan" Hill of College Station.

Pursuant to HB 2, 84th Legislature, Regular Session, appointed to the Technical Advisory Committee to the Bureau of Economic Geology, for a term at the pleasure of the Governor, Dana M. Jurick of Houston.

Pursuant to HB 2, 84th Legislature, Regular Session, appointed to the Technical Advisory Committee to the Bureau of Economic Geology, for a term at the pleasure of the Governor, Kris J. Nygaard of Houston.

Pursuant to HB 2, 84th Legislature, Regular Session, appointed to the Technical Advisory Committee to the Bureau of Economic Geology, for a term at the pleasure of the Governor, Brian W. Stump of McKinney.

Pursuant to HB 2, 84th Legislature, Regular Session, appointed to the Technical Advisory Committee to the Bureau of Economic Geology, for a term at the pleasure of the Governor, Robert C. "Robie" Vaughn of Dallas. Mr. Vaughn will serve as presiding officer of the committee.

Pursuant to HB 2, 84th Legislature, Regular Session, appointed to the Technical Advisory Committee to the Bureau of Economic Geology, for a term at the pleasure of the Governor, Christopher B. "Chris" Hillman of Irving.

Pursuant to HB 2, 84th Legislature, Regular Session, appointed to the Technical Advisory Committee to the Bureau of Economic Geology, for a term at the pleasure of the Governor, Hal H. Macartney of Irving.

Pursuant to HB 2, 84th Legislature, Regular Session, appointed to the Technical Advisory Committee to the Bureau of Economic Geology, for a term at the pleasure of the Governor, David "Craig" Pearson of Midland.

Pursuant to HB 2, 84th Legislature, Regular Session, appointed to the Technical Advisory Committee to the Bureau of Economic Geology, for a term at the pleasure of the Governor, Scott W. Tinker of Austin.

**Appointments for March 28, 2016**

Appointed to the Product Development and Small Business Incubator Board for a term to expire February 1, 2019, Arun Agarwal of Dallas (replacing David L. Miller of Abernathy who resigned).

**Appointments for March 29, 2016**

Designating Ayeez A. Lalji of Sugar Land as presiding officer of the Statewide Health Coordinating Council for a term at the pleasure of the Governor. Dr. Lalji is replacing Roger Michael Ragain of Lubbock as presiding officer.

Appointed to the Statewide Health Coordinating Council for a term to expire August 1, 2017, Larry E. Safir of McAllen (replacing Mabrie Griffith Jackson of Plano who resigned).

Appointed to the Statewide Health Coordinating Council for a term to expire August 1, 2019, Salil V. Deshpande of Houston (replacing Davidica Q. Blum of Georgetown who resigned).

Appointed to the Statewide Health Coordinating Council for a term to expire August 1, 2021, Carol Boswell of Andrews (replacing Roger Michael Ragain of Lubbock whose term expired).

Appointed to the Statewide Health Coordinating Council for a term to expire August 1, 2021, Melinda A. Rodriguez of San Antonio (replacing Abigail H. "Abby" Blackburn of Austin whose term expired).

Appointed to the Statewide Health Coordinating Council for a term to expire August 1, 2021, Courtney P. Sherman of Fort Worth (replacing Roxanne M. Schroeder of Colleyville whose term expired).

Appointed to the Statewide Health Coordinating Council for a term to expire August 1, 2021, Shaukat A. Zakaria of Houston (replacing James R. "Bob" Yancy of College Station whose term expired).

Appointed to the Statewide Health Coordinating Council for a term to expire August 1, 2021, Yasser F. Zeid of Longview (replacing Fred Sinclair Brinkley, Jr. of Austin whose term expired).

Greg Abbott, Governor

TRD-201601402

◆ ◆ ◆  
Proclamation 41-3478

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of Texas, issued an Emergency Disaster Proclamation on March 14, 2016, certifying that the severe weather and flooding event that began on March 7, 2016, has caused a disaster in many Texas counties. Those same conditions continue to exist in these and other counties in Texas.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend the aforementioned proclamation and declare a disaster in Angelina, Erath, Gregg, Hardin, Harrison, Henderson, Hood, Jasper, Jefferson, Liberty, Madison, Marion, Newton, Orange, Parker, Sabine, San Augustine, Shelby, Smith, Tyler, and Walker counties in the State of Texas.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 16th day of March, 2016.

Greg Abbott, Governor

TRD-201601403

# THE ATTORNEY GENERAL

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

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

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

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

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## Opinions

### Opinion No. KP-0073

Mr. David Reilly

Executive Director

Texas Juvenile Justice Department

Post Office Box 12757

Austin, Texas 78711

Re: Applicability of expunction orders under article 45.0541 of the Code of Criminal Procedure to records in the possession of a juvenile probation department as a result of a referral for delinquent conduct as defined by subsection 51.03(a)(2) of the Family Code (RQ-057-KP)

#### S U M M A R Y

An expunction order issued to a juvenile probation department under article 45.0541 of the Code of Criminal Procedure would likely apply to documents in the department's possession as a result of a referral to the juvenile court for delinquent conduct as defined by subsection 51.03(a)(2) of the Family Code. A juvenile probation department must determine in the first instance how to comply with a court's expunction order according to its terms and consistent with article 45.0541.

### Opinion No. KP-0074

The Honorable Micheal E. Jimerson

Rusk County & District Attorney

115 North Main, Suite 302

Henderson, Texas 75652

Re: Whether section 202.052 of the Estates Code requires citation by publication in all actions to determine heirship (RQ-0058-KP)

#### S U M M A R Y

A court would likely conclude that section 202.052 of the Estates Code requires citation by publication in all heirship proceedings to determine whether a decedent has any unknown heirs.

### Opinion No. KP-0075

The Honorable Jim Keffer

Chair, Committee on Natural Resources

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768

Re: Whether a county that has accepted a public dedication of a right-of-way is obligated to maintain the sidewalks in that right-of-way (RQ-0061-KP)

#### S U M M A R Y

A county road may include the sidewalks in the right-of-way. Whether a county has accepted a public dedication of a right-of-way such that the sidewalks are within the county's maintenance obligations is a question beyond the purview of an attorney general opinion.

To the extent any of the actions in Transportation Code section 251.051 may be applicable to Dallas Drive, Williamson County may utilize them upon compliance with the requirements of the statute.

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

TRD-201601454

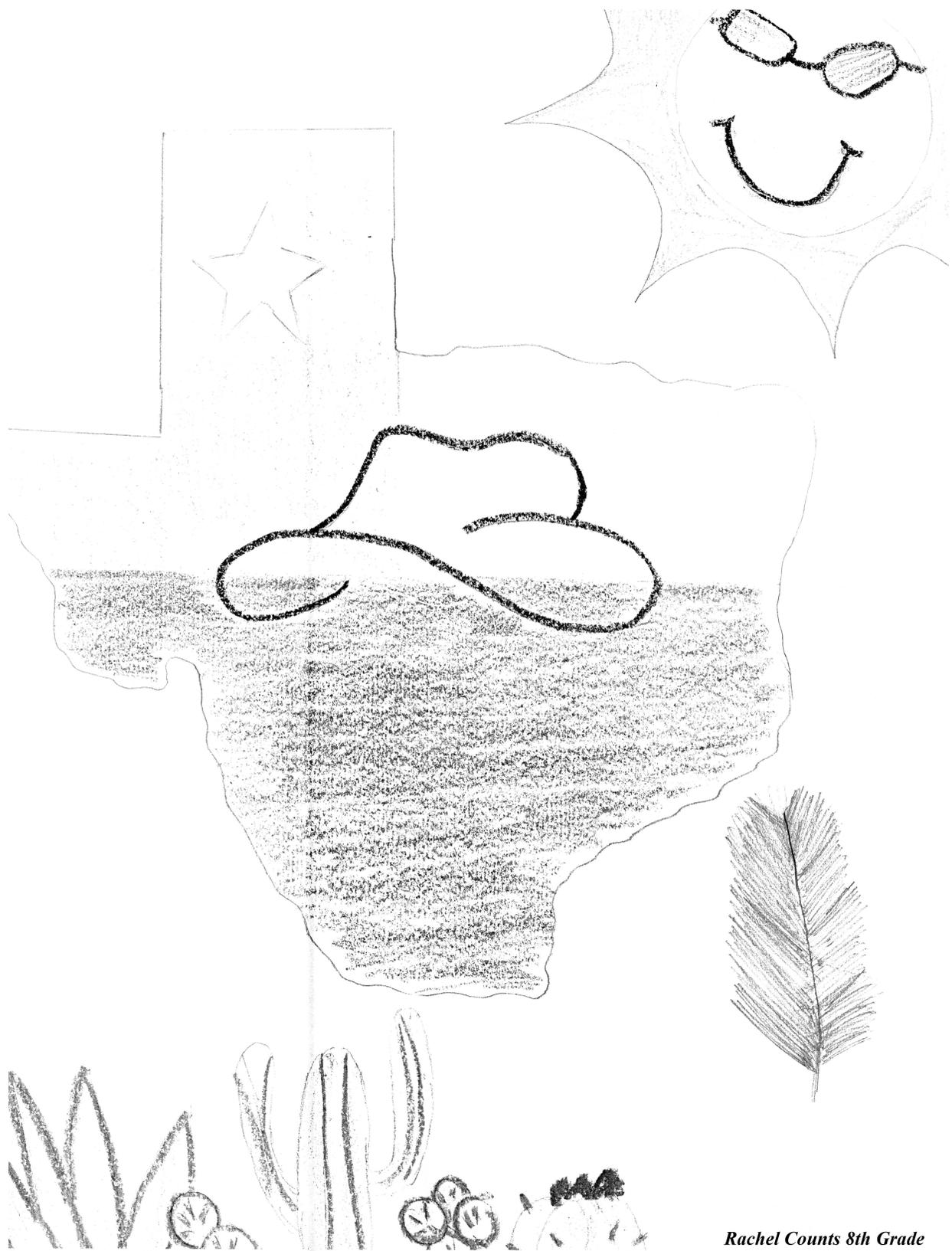
Amanda Crawford

General Counsel

Office of the Attorney General

Filed: March 29, 2016





*Rachel Counts 8th Grade*

# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

## TITLE 16. ECONOMIC REGULATION

### PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

#### CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

##### SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

###### 16 TAC §§26.403 - 26.405

The Public Utility Commission of Texas (commission) proposes amendments to §26.403, relating to the Texas High Cost Universal Service Plan (THCUSP); §26.404, relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan; and §26.405, relating to Financial Need for Continued Support. The proposed amendments will clarify the identification of eligible residential and business lines and will clarify the criteria that define a service location or address. Project Number 42600 is assigned to this proceeding.

Ms. Liz Kayser, Section Director, Competitive Markets Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Kayser has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be to improve the administration of the Texas Universal Service Fund by clarifying the identification of eligible residential and business lines and clarifying the criteria that define a service location or address. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Ms. Kayser has also determined that for each year of the first five years the proposed sections are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rule-making, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's

offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 14 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 24 days after publication. Comments should be organized in a manner consistent with the organization of the proposed amendments. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt the sections. All comments should refer to Project Number 42600.

The commission proposes these amendments under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 & Supp. 2015) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §56.021 which requires the commission to adopt and enforce rules to establish the Texas Universal Service Fund to assist telecommunications providers in providing basic local telecommunications service at reasonable rates in high cost rural areas.

Cross Reference to Statutes: PURA §14.002 and §56.021.

§26.403. *Texas High Cost Universal Service Plan (THCUSP).*

(a) (No change.)

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

(1) Business line--The telecommunications facilities providing the communications channel that serves a single-line business customer's service address. For the purpose of this definition, a single-line business line is one to which multi-line hunting, trunking, or other special capabilities do not apply. For a line served by an ILEC, a business line is a line served pursuant to the ILEC's business service tariff or a package that includes such a tariffed service. For a line served by an ETP other than an ILEC, to qualify as a business line, the service must be provided pursuant to a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device.

(2) Eligible line--A residential line or a single-line business line over which an ETP provides the service supported by the THCUSP through its own facilities, purchase of unbundled network elements

(UNEs), or a combination of its own facilities and purchase of UNEs. An eligible line may be a business line or a residential line but shall not be both.

(3) (No change.)

(4) Residential line--The telecommunications facilities providing the communications channel that serves a residential customer's service address. For the purpose of this definition, a residential line is one to which multi-line hunting, trunking, or other special capabilities do not apply. A line that qualifies as a business line shall not qualify as a residential line.

(5) Service Address--For the purposes of this section, a business or residential customer's service address is the unique physical street address, including any suite or unit number, where a line is served to a customer; if no unique physical street address is available, then a physical 911 address may be used; if no unique physical street address or physical 911 address is available, then the business or residential customer's billing address shall be used. GPS coordinates shall not be used as a part or in lieu of a unique physical street address, physical 911 address, or customer billing address. For the purposes of this definition, a physical 911 address is an address transmitted to the emergency service providers by an ETP with respect to a line that is not stated in GPS coordinates.

(c) - (f) (No change.)

(g) Reporting requirements. An ETP that receives support pursuant to this section shall report the following information:

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

(4) Other reporting requirements. An ETP shall report any other information that is required by the commission or [ef] the TUSF administrator, including any [and] information necessary to assess contributions and disbursements from the TUSF.

*§26.404. Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan.*

(a) (No change.)

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

(1) Business line--The telecommunications facilities providing the communications channel that serves a single-line business customer's service address. For the purpose of this definition, a single-line business line is one to which multi-line hunting, trunking, or other special capabilities do not apply. For a line served by an ILEC, a business line is a line served pursuant to the ILEC's business service tariff or a package that includes such a tariffed service. For a line served by an ETP other than an ILEC, to qualify as a business line, the service must be provided pursuant to a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device.

(2) [(4)] Eligible line--A residential line or a single-line business line over which an ETP provides the service supported by the Small and Rural ILEC Universal Service Plan (SRILEC USP) through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs. An eligible line may be a business line or a residential line but shall not be both.

(3) [(2)] Eligible telecommunications provider (ETP)--A telecommunications provider designated by the commission pursuant to §26.417 of this title (relating to Designation as Eligible Telecom-

unications Providers to Receive Texas Universal Service Funds (TUSF)).

(4) Residential line--The telecommunications facilities providing the communications channel that serves a residential customer's service address. For the purpose of this definition, a residential line is one to which multi-line hunting, trunking, or other special capabilities do not apply. A line that qualifies as a business line shall not qualify as a residential line.

(5) Service Address--For the purposes of this section, a business or residential customer's service address is the unique physical street address, including any suite or unit number, where a line is served to a customer; if no unique physical street address is available, then a physical 911 address may be used; if no unique physical street address or physical 911 address is available, then the business or residential customer's billing address shall be used. GPS coordinates shall not be used as a part or in lieu of a unique physical street address, physical 911 address, or customer billing address. For the purposes of this definition, a physical 911 address is an address transmitted to the emergency service providers by an ETP with respect to a line and that is not stated in GPS coordinates.

(6) [(3)] Small incumbent local exchange company--An incumbent local exchange (ILEC) that qualifies as a "small local exchange company" as defined in the Public Utility Regulatory Act (PURA), §53.304(a)(1).

(c) (No change.)

(d) Service to be supported by the Small and Rural ILEC Universal Service Plan. The Small and Rural ILEC Universal Service Plan shall support the provision by ETPs of basic local telecommunications service as defined in §26.403(d) of this title (relating to Texas High Cost Universal Service Plan (THCUSP)) and is limited to those services carried on all residential lines and the first five single-line business lines at a business customer's service address for which a flat rate plan is an available option.

(e) - (g) (No change.)

(h) Reporting requirements. An ETP eligible to receive support under this section shall report information as required by the commission and the TUSF administrator.

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

(4) Other reporting requirements. An ETP shall report any other information that is required by the commission or the TUSF administrator, including and information necessary to assess contributions any [and] and disbursements from the TUSF.

*§26.405. Financial Need for Continued Support.*

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

(c) Definitions. The following words and terms when used in this section shall have the following meaning unless the context clearly indicates otherwise:

(1) Business line--The telecommunications facilities providing the communications channel that serves a single-line business customer's service address. For the purpose of this definition, a single-line business line is one to which multi-line hunting, trunking, or other special capabilities do not apply. For a line served by an ILEC, a business line is a line served pursuant to the ILEC's business service tariff or a package that includes such a tariffed service. For a line served by an ETP other than an ILEC, to qualify as a business line, the service must be provided pursuant to a customer application, subscriber agreement, or contract entered into by a public or private organization of any

character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device.

(2) Eligible line--A residential line or a single-line business line over which an ETP provides the service supported by the THCUSP or SRILEC USP through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs. An eligible line may be a business line or a residential line but shall not be both.

(3) (No change.)

(4) Residential line--The telecommunications facilities providing the communications channel that serves a residential customer's service address. For the purpose of this definition, a residential line is one to which multi-line hunting, trunking, or other special capabilities do not apply. A line that qualifies as a business line shall not qualify as a residential line.

(5) Service Address--For the purposes of this section, a business or residential customer's service address is the unique physical street address, including any suite or unit number, where a line is served to a customer; if no unique physical street address is available, then a physical 911 address may be used; if no unique physical street address or physical 911 address is available, then the business or residential customer's billing address shall be used. GPS coordinates shall not be used as a part or in lieu of a unique physical street address, physical 911 address, or customer billing address. For the purposes of this definition, a physical 911 address is an address transmitted to the emergency service providers by an ETP with respect to a line that is not stated in GPS coordinates.

(d) - (i) (No change.)

(j) Service to be supported. The services to be supported pursuant to the section are subject to the same definitions and limitations as those set out in §26.403(d) and §26.404(d) of this title, in addition to any limitation ordered by the commission in a contested case proceeding.

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

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Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

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



## CHAPTER 27. RULES FOR ADMINISTRATIVE SERVICES

### SUBCHAPTER E. ENHANCED CONTRACT MONITORING

#### 16 TAC §27.170

The Public Utility Commission of Texas (commission) proposes new Subchapter E, Enhanced Contract Monitoring, §27.170, relating to Enhanced Contract Monitoring Procedure. The proposed new section will establish a procedure identifying contracts that require enhanced contract monitoring pursuant to Texas Government Code §2261.253, which was added by

Senate Bill 20 (84th Leg). Project Number 45273 is assigned to this proceeding.

Mr. Jay Stone, Program Administrator, Budget & Fiscal Oversight Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Jay Stone has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the higher level of monitoring associated with commission contracts that have a risk level of medium or high. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section.

Mr. Jay Stone has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rule-making, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed new section may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 14 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 45273.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2015), which provides the Public Utility Commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statute: Public Utility Regulatory Act §14.002.

§27.170. Enhanced Contract Monitoring Procedure.

(a) The commission shall assess each contract to determine whether enhanced contract monitoring is necessary.

(1) The commission shall use the following factors to determine whether enhanced contract monitoring is necessary:

(A) the complexity of the services,

(B) the contract amount,

(C) whether the services or contractor are new or changed significantly,

(D) whether the project involved is a high profile project, and

(E) any other factors that may impact the project.

(2) Projects deemed medium or high risk shall be co-monitored by contract and program staff and may involve additional team members such as legal, fiscal, and auditing staff members.

(b) If a contract is determined to need enhanced monitoring, the commission will require the vendor to provide specific programmatic information on a scheduled basis to determine if performance measures are being met.

(1) Programmatic reports shall include information related to the performance measures in the contract, as well as any other deliverables.

(2) Enhanced monitoring may also include site visits, additional meetings with the vendor's staff and other documentation determined to assess progress by the agency towards meeting performance requirements.

(c) The director of fiscal division shall notify agency executive staff of contracts needing enhanced monitoring through this process.

(d) This process does not apply to interagency agreement, interlocal agreement, a memorandum of understanding with another state agency, or a contract for which there is not a cost.

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

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Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

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



## PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

### CHAPTER 35. ENFORCEMENT

#### SUBCHAPTER A. TRANSPORTATION OF LIQUOR

##### 16 TAC §35.5

The Texas Alcoholic Beverage Commission proposes amendments to §35.5, relating to Private Carrier's Permit Safety Program.

Section 35.5 addresses insurance requirements for holders of Private Carrier Permits under Chapter 42 of the Alcoholic Beverage Code.

When §35.5 was originally adopted in 1996, the commission's intent was for it to qualify as a "comparable registration and safety program" under the provisions of Texas Civil Statutes Article 6676(c), §2(3) then in effect. The consequence of such a qualification was to release affected permittees from the obligation of complying with overlapping regulation by the commission and by the Texas Department of Transportation. See the *Texas Register* issue of August 16, 1996 (21 TexReg 7729).

Today, Transportation Code §643.002(5) simply exempts a vehicle operating under a Private Carrier Permit from the requirements of Chapter 643 of the Transportation Code, relating to

Motor Carrier Registration. Thus, it is unnecessary for the rule to have details demonstrating that it is comparable to the motor carrier registration and safety requirements now administered by the Texas Department of Motor Vehicles. Therefore, the proposed amendments would delete much of the specificity in the current rule regarding coverage while maintaining the core requirement that private carriers maintain a \$500,000 liability insurance policy to cover bodily injury and property damage.

Although strict comparability with Texas Department of Motor Vehicle requirements is no longer necessary, it is the commission's intent to impose a similar basic insurance requirement on private carriers as that imposed by the Texas Department of Motor Vehicles on others who transport alcoholic beverages. In that regard, proposed subsection (a) would exempt from coverage vehicles below a certain weight, which is consistent with Texas Department of Motor Vehicles regulation of other types of carriers.

In lieu of the requirement currently in subsection (a) that the Private Carrier Permit holder shall file proof of insurance with the commission, proposed subsection (c) would require the permit holder to file an affidavit that it is in compliance with the requirements for insurance coverage in this section.

Section 35.5 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the requirements for private carrier liability insurance will be easier to understand.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.texas.gov/laws/proposed\\_rules.asp](http://www.tabc.texas.gov/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, April 28, 2016 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendments affect Alcoholic Beverage Code §5.31 and Government Code §2001.039.

§35.5. *Private Carrier [Carrier's] Permit Requirements [Safety Program].*

(a) Each holder of a private carrier [carrier's] permit shall carry at least \$500,000 of liability insurance for bodily injury and property damage covering every registered vehicle whose gross weight, registered weight or gross-weight rating exceeds 26,000 pounds. [and file proof of insurance with the commission for each vehicle registered. Such insurance must be sufficient to pay, not more than the amount of the insurance, for each final judgment against the permit holder (combined single limit) for bodily injury to or death of an individual per occurrence, and loss or damage to property (excluding cargo) per occurrence, or both.]

(b) Each holder of a private carrier [carrier's] permit shall maintain proof of insurance in their permitted vehicles at all times. [This proof shall be in the form prescribed by the commission and the Texas Department of Insurance in coordination with the Texas Department of Public Safety.]

[(1) No insurance policy or certificate of insurance will be accepted by the commission unless issued by an insurance or surety company licensed and authorized to do business in the State of Texas. The commission adopts Department of Insurance "Form E" (Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate) and "Form K" (Uniform Notice of Cancellation of Motor Carrier Insurance Policies) for the purposes of this section (which forms have been prescribed and approved by the Department of Insurance). These forms must be filed with the commission and signed or countersigned by an authorized agent of the insurance or surety company. The commission will accept a certificate of insurance issued by a surplus lines insurer that meets the requirements of Insurance Code, Article 1.14-2 and rules adopted by the Department of Insurance under that article.]

[(2) If the insurer or surety of a permittee subject to this rule becomes insolvent or becomes involved in a receivership or other insolvency proceeding, the permittee may apply for approval of a surety bond or insurance policy issued by another surety or insurer upon filing an affidavit with the commission. Such affidavit shall be executed by the permittee and show that:]

[(A) no accidents or claims have occurred during the insolvency of the insurance carrier or surety; and]

[(B) that all damages and claims have been satisfied; and]

[(C) the commission shall notify the Texas Department of Public Safety of each notice received under this subsection.]

(c) Each holder of a private carrier [carrier's] permit shall file with the commission [complete] an affidavit stating that the permittee has knowledge of, and will conduct operations in accordance with, all federal and state safety regulations, and that it is in compliance with the requirements for insurance coverage under this section.

(d) Private carrier permits are subject to the same protest and complaint policies as other permits. [The Department of Public Safety may request that the commission suspend or cancel a private carrier's permit if a permittee:]

[(1) has an unsatisfactory safety rating under 49 Code of Federal Regulations, Part 385; or]

[(2) has multiple violations of a provision of Texas Civil Statutes, Article 6675d; a rule adopted under that article or the Uniform Act Regulating Traffic on Highways (Texas Civil Statutes, Article 6701d). A request for suspension or revocation under this subsection shall be submitted in writing by the executive director of the Texas Department of Public Safety, and shall include appropriate documentation evidencing the violation. The commission or administrator may suspend or cancel an original or renewal permit in response to such

a request, after notice and hearing under the Alcoholic Beverage Code and the rules of the commission, pursuant to Alcoholic Beverage Code, §11.61(b)(7).]

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

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Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3489



## CHAPTER 41. AUDITING

### SUBCHAPTER C. RECORDS AND REPORTS BY LICENSEES AND PERMITTEES

#### 16 TAC §41.21

The Texas Alcoholic Beverage Commission (Commission) proposes amendments to §41.21, relating to Industrial Permits.

Section 41.21 currently specifically addresses reporting requirements for holders of Industrial Permits under Chapter 38 of the Alcoholic Beverage Code. The proposed amendments would also include reporting requirements for holders of Local Industrial Alcohol Manufacturer's Permits under Chapter 47 of the Alcoholic Beverage Code, and record-keeping requirements for both types of permit holders.

The proposed amendments do not change the current requirement that the monthly report shall be on a form prescribed by the executive director, but delete the current list of items that must be included on the report. Proposed subsection (b)(3) clarifies that the required reports must account for all types of alcohol except denatured alcohol.

Proposed subsection (c) provides that holders of Industrial Permits and of local Industrial Alcohol Manufacturer's Permits shall maintain records of daily operations and make such records available to the Commission upon request.

Section 41.21 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for re-adoption each of its rules. The Commission has determined that the need for the section continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the Commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because reporting and record keeping requirements

relating to Industrial Permits and Local Industrial Alcohol Manufacturer's Permits will be clearer.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the Commission's public website at [http://www.tabc.texas.gov/laws/proposed\\_rules.asp](http://www.tabc.texas.gov/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the Commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, April 28, 2016, at 1:30 p.m. in the commission meeting room at the Commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendments affect Alcoholic Beverage Code §5.31 and Government Code §2001.039.

§41.21. Industrial Permits and Local Industrial Alcohol Manufacturer's Permits.

(a) Purchase and sale.

(1) Holders of industrial permits may purchase or otherwise acquire alcohol [wine and vinous liquor in containers of not less than one gallon] without payment of state tax from the holders of licenses or permits who are authorized to sell to them, provided that the alcohol so acquired [in Texas, authorizing the manufacture or importation of wines, subject to restrictions herein provided and conditioned that such wine and vinous liquor] shall be used for no purpose other than the compounding or manufacture of medicines and food products.

(2) Holders of local industrial alcohol manufacturer's [Class A winery] permits may engage in the activities authorized in Alcoholic Beverage Code §47.01. [Class B winery permits, wholesaler's permits, Class B wholesaler's permits and wine bottler's permits may sell to the holders of industrial permits wine and vinous liquor in containers of not less than one gallon without payment of state tax and subject to restrictions herein provided.]

(b) Reports [Report-receiving].

(1) Each holder of an industrial permit and each holder of a local industrial alcohol manufacturer's permit shall make a monthly report to the commission on a form prescribed by the executive director [administrator (Industrial Receiving Record Wine)].

(2) The report shall be made and filed by the permittee with the commission at its office in Austin, Texas, on or before the 15th day of the month following the calendar month for which the report is made, [and shall show the following:]

- [(A) A full and complete record of all wine and vinous liquors received or possessed;]
- [(B) The date received;]
- [(C) From whom received;]
- [(D) Point of origin of the shipment;]
- [(E) Date of invoice;]
- [(F) Seller's invoice number;]
- [(G) Total number and size of containers received;]

[(H) The total amount in wine gallons of wine containing not more than 14% alcohol by volume;]

[(I) The same information in regard to wine received containing over 14% alcohol by volume and not more than 24% of alcohol by volume; and]

[(J) The name of the carrier making delivery.]

(3) The reports required by this section shall account for all types of alcohol except denatured alcohol. [Entries shall be made on this report within 24 hours after the date any wine is received or becomes the property of the permittee at any point within the State of Texas.]

[(4) The permittee shall give all information required to be reported on the prescribed form and the report shall be signed and sworn to by the permittee or his duly authorized representative before a notary public or other officer authorized to administer oaths.]

(c) Records. Each holder of an industrial permit and each holder of a local industrial alcohol manufacturer's permit shall maintain a separate record for each day's operation showing the date of operation, the opening and closing inventory of each type of alcohol, and the total gallons manufactured, purchased, sold and used. This record and related invoices and shipping documents shall be made available to a representative of the commission upon request. [Report—manufacturing]

[(1) Each holder of an industrial permit shall make a monthly report to the commission on a form prescribed by the administrator (Industrial Manufacturing Report).]

[(2) The report shall be made and filed by the permittee with the commission at its offices in Austin on or before the 15th day of the month following the calendar month for which the report is made and shall show:]

[(A) a full and complete record of all wine and vinous liquor received and used in the compounding or manufacture of medicines or food products during the month for which such report is made;]

[(B) the date of each day's operation;]

[(C) the opening inventory in wine gallons;]

[(D) receipts in wine gallons;]

[(E) wine gallons used in the compounding or manufacture of medicines or food products;]

[(F) closing inventory in wine gallons;]

[(G) total packages of resultant products, stating number and size of packages, that is, in case of bottles, fluid content; in case of packages, ounces or pounds and ounces;]

[(H) name of product manufactured; and]

[(I) the same information to be reported separately on wines in each tax classification.]

(3) On the closing day of the month for which the report is made an actual physical inventory shall be made of all wine on hand and results posted on the form directly below the figures shown on the closing day of the month, all wine to be considered as wine on hand until the product is packaged.]

[(4) Entries shall be made on this report within 48 hours after the date that any such wines are received or packaged.]

[(5) The permittee shall give all information required to be reported on the form and the report shall be signed and sworn to by the

permittee or his duly authorized representative before a notary public or other officer authorized to administer oaths.]

~~[(d) Report not required. Holders of industrial permits who do not purchase or handle wine or vinous liquors in any way shall not be required to make the reports herein required.]~~

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

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Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3489

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## 16 TAC §41.25

The Texas Alcoholic Beverage Commission proposes amendments to §41.25, relating to Records to be Kept Separate.

Section 41.25 requires alcoholic beverage invoices to have the exact trade names of issuing and receiving permittees or licensees; requires permittees or licensees owning more than one business operating under separate permits or licenses, or a single business operating at two or more locations, to keep separate records for each business or place of business; requires permittees and licensees who are also engaged in any other kind of business to keep separate records for the alcoholic beverage business; requires permittees and licensees to keep records for two years, and make them available for inspection by the commission during reasonable office hours; and provides that making a false entry or alteration in records is a violation of the section.

The proposed amendments change the wording but not the substance of the section. The title would be changed to reflect that the rule addresses topics other than keeping records separate. Proposed subsection (d) clarifies that the two-year record retention requirement applies unless the Alcoholic Beverage Code or some other rule provides otherwise.

Section 41.25 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for reoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the requirements of the rule will be stated affirmatively and clearly.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.texas.gov/laws/proposed\\_rules.asp](http://www.tabc.texas.gov/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, April 28, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendments affect Alcoholic Beverage Code §5.31 and Government Code §2001.039.

*§41.25. Records and Invoice Requirements [To Be Kept Separate].*

(a) An [It shall be unlawful for any permittee or licensee to issue or receive an] invoice that is required by the Alcoholic Beverage Code or by rule for any alcoholic beverage must have [wherein an invoice is required by law or by a rule of the commission unless the same bears] the exact trade name of the issuing permittee or licensee and the receiving permittee or licensee, if any.

(b) A permittee or licensee [It shall be unlawful for any person] who owns more than one business operating under separate permits or licenses or a single business operating at two or more locations under separate permits or licenses shall [to fail to] keep separate records for each such business or place of business.

(c) Each permittee and licensee who is also engaged in any other kind of business shall make and keep all records for the alcoholic beverage business that are required by the Alcoholic Beverage Code or by rule [for his alcoholic beverage business] separate and apart from any and all other records.

(d) All [sueh] records that are required by the Alcoholic Beverage Code or by rule shall be kept for a period of at least two years, unless a different period is specified in the Alcoholic Beverage Code or in some other rule, and shall be kept open for inspection by the commission or its authorized representatives during reasonable office hours.

(e) Making a [If any] false entry or any alteration [whatever is made] in [said] records that are required by the Alcoholic Beverage Code or by rule is[; same shall be] a violation of this section.

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

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Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3489

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## 16 TAC §41.27

The Texas Alcoholic Beverage Commission proposes amendments to §41.27, relating to Tax Credit--Wine Processing.

Section 41.27 currently addresses the procedures for claiming a tax credit by holders of Wine Bottler's Permits under Chapter 18 of the Alcoholic Beverage Code or Winery Permits under Chapter 16 of the Alcoholic Beverage Code. Other sections of the commission's rules set forth the procedures for claiming a tax credit that are generally applicable to permittees and licensees and it is not necessary to have a separate rule prescribing different procedures for wine bottlers and wineries. Therefore, the proposed amendments would delete the tax credit provisions of the current rule.

With some changes to the language but not the substance, the remaining provisions of current §41.27 would be carried forward in the proposed amendments. The substance of current subsection (d) would become subsection (a). The substance of current subsection (e) would become subsection (b). The substance of current subsection (f) would become subsection (c).

Section 41.27 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the requirements of the rule will be stated affirmatively and clearly, and tax credit procedures for wine bottlers and wineries will be the same as those for other alcoholic beverage permittees and licensees.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.texas.gov/laws/proposed\\_rules.asp](http://www.tabc.texas.gov/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, April 28, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendments affect Alcoholic Beverage Code §5.31 and Government Code §2001.039.

§41.27. [~~Tax Credit--~~Wine Processing.

(a) A holder of a wine bottler's permit may only bottle wine that it owns. A holder of a winery permit may only bottle wine that

it manufactures or blends. [A holder of a wine bottler's or winery permit who possesses wine on which the state excise tax has been paid and which is to be refiltered, reconditioned, or destroyed and who desires to be reimbursed for the state tax may notify the district supervisor of the commission. The district supervisor shall assign one or more inspectors to make an inventory of the amount of wine to be reconditioned, refiltered, or destroyed.]

(b) A holder of a wine bottler's permit or a holder of a winery permit may not bottle or rebottle wine from a container of less than five gallons. [The inventory report shall be executed in quadruplicate on a form furnished by the commission. Such form shall show: date; number and size of containers; trade name of permittee; permit number; class of permit; address and amount of tax paid on such wine. The report shall be signed and sworn to before a notary public or other officer authorized to administer oaths by the said permittee or his authorized representative. The de facto original and two other originals shall be sent by the inspector to the administrator and the fourth original given the permittee and retained by him in his permanent file for a period of two years.]

(c) A holder of a wine bottler's permit or a holder of a winery permit, or any agent, servant or employee of either, may not possess on the premises any wine in containers of less than five gallons except for the purpose of lawful sale. [The inventory shall be construed to be a request by the permittee for tax credit. If the administrator approves the request, he shall notify the permittee in writing. After receiving such written notice, the permittee may, on his next succeeding payment of the state excise tax on wine, deduct from his remittance any tax credit then existing on the account. If the administrator refuses the request in whole or in part he shall notify the permittee in writing and shall state therein the reason therefor.]

{(d) No holder of a wine bottler's permit shall bottle any wine other than that which is owned by him. No holder of a class A or class B winery permit shall bottle any wine other than that which is manufactured or blended by such permittee.]

{(e) It shall be unlawful for any holder of a wine bottler's permit or winery permit to bottle or rebottle wine from a container of less than five gallons.]

{(f) It shall be unlawful for the holder of a wine bottler's permit or winery permit, or any agent, servant or employee to have in his possession any wine, in containers of less than five gallons except for the purpose of lawful sale.]

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

Filed with the Office of the Secretary of State on March 23, 2016.

TRD-201601390

Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: May 8, 2016

For further information, please call: (512) 206-3489

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## 16 TAC §41.29

The Texas Alcoholic Beverage Commission proposes the repeal of §41.29, relating to Bonded Warehouse Breakage.

Section 41.29 addresses the requirement that bonded warehouses must store liquor in full and unbroken case lots, as

well as well as procedures to be followed in the event of actual breakage of stored liquor.

The commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for a rule addressing these issues continues to exist but that they are more appropriately addressed elsewhere. Therefore, the commission is proposing to repeal the text of this section and to address the issues in its proposed amendments to §41.39, relating to Warehouse Report.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed repeal will be in effect, there will be no fiscal impact on state or local government.

The proposed repeal will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed repeal will be in effect, the public will benefit because regulations relating to bonded warehouses will be consolidated and easier for the public to access.

Comments on the proposed repeal may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.texas.gov/laws/proposed\\_rules.asp](http://www.tabc.texas.gov/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed repeal on Thursday, April 28, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed repeal is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed repeal affects Alcoholic Beverage Code §5.31 and Government Code §2001.039.

*§41.29. Bonded Warehouse Breakage.*

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

Filed with the Office of the Secretary of State on March 23, 2016.

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Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3489



**16 TAC §41.31**

The Texas Alcoholic Beverage Commission proposes amendments to §41.31, relating to Tax.

Section 41.31 currently addresses taxes due from importers of distilled spirits and wine, and from manufacturers or importers of

ale and malt liquor. The proposed amendments would address the excise taxes due from manufacturers, wholesalers and distributors on the first sale of all alcoholic beverages, including the due date for the taxes and the appropriate references to the Alcoholic Beverage Code. The proposed amendments would also allow payments to be made by electronic funds transfers, checks and money orders, and provide that payments be made to the Texas Alcoholic Beverage Commission instead of to the State Treasurer of Texas.

Section 41.31 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for re-adoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the rule will apply to all parties owing excise taxes, additional forms of payment will be authorized, and the appropriate payee will be named.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.texas.gov/laws/proposed\\_rules.asp](http://www.tabc.texas.gov/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, April 28, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendments affect Alcoholic Beverage Code §5.31 and Government Code §2001.039.

*§41.31. Excise Tax.*

Holders of licenses and permits authorizing the manufacture, wholesaling or distribution of distilled spirits, wine, ale, malt liquor, and beer in [importation of distilled spirits and wines into] this state must pay the assessed excise tax [assessed on distilled spirits and wines] not later than the 15th day of the month following the month in which occurs the "first sale" as this term is defined in [the] Alcoholic Beverage Code §§201.02, 201.41 and 203.02.[, §201.02. Holders of permits authorizing the manufacturing in this state or importation into this state of ale and malt liquor must pay the tax assessed on ale and malt liquor not later than the 15th day of the month following the month in which occurs the first sale or importation into this state of ale and malt liquor must pay the tax assessed on ale and malt liquor not later than the 15th day of the month following the month in which occurs the first sale

or importation as set forth in §201.41, et seq., of the Alcoholic Beverage Code. Remittance of the taxes on liquor, less 2.0% of the amount due when submitted within the required time, shall accompany the reports hereinafter provided for in §41.32 of this title (relating to Monthly Report of Distilled Spirits and Wines), §41.34 of this title (relating to Distilled Spirits Report of Miniatures), §41.36 of this title (relating to Monthly Report of Ale and Malt).] Remittance of all taxes shall be made by electronic funds transfer, check or money order made payable to the Texas Alcoholic Beverage Commission. [~~cashier's check, certified check, or United States postal money order, payable to the State Treasurer of Texas.~~]

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

Filed with the Office of the Secretary of State on March 24, 2016.

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Martin Wilson

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Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3489



### 16 TAC §41.37

The Texas Alcoholic Beverage Commission proposes the repeal of §41.37, relating to Industrial Alcohol Report.

Section 41.37 addresses the monthly reporting requirement for holders of Industrial Permits under Chapter 38 of the Alcoholic Beverage Code.

The commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for a rule addressing this reporting requirement continues to exist but that it is more appropriately addressed elsewhere. Therefore, the commission is proposing to repeal the text of this section and to address the reporting requirement in its proposed amendments to §41.21, relating to Industrial Permits.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed repeal will be in effect, there will be no fiscal impact on state or local government.

The proposed repeal will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed repeal will be in effect, the public will benefit because regulations relating to Industrial Permits will be consolidated and easier for the public to access.

Comments on the proposed repeal may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.texas.gov/laws/proposed\\_rules.asp](http://www.tabc.texas.gov/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed repeal on Thursday, April 28, 2016 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed repeal is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed repeal affects Alcoholic Beverage Code §5.31 and Government Code §2001.039.

### §41.37. Industrial Alcohol Report.

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

Filed with the Office of the Secretary of State on March 23, 2016.

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Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: May 8, 2016

For further information, please call: (512) 206-3489



### 16 TAC §41.38

The Texas Alcoholic Beverage Commission proposes amendments to §41.38, relating to Carrier Report.

Section 41.38 addresses the reporting requirements for holders of Carrier Permits under Chapter 41 of the Alcoholic Beverage Code. The only substantive change that would be made by the proposed amendments would be to eliminate the requirement that car number and initials be given on the monthly report. Otherwise, the proposed amendments are changes to the wording, including changing the reference from "the administrator" to "the executive director" consistent with Alcoholic Beverage Code §5.11(b) and commission practice.

Section 41.38 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for re-adoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because an unnecessary reporting requirement will be eliminated.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280.

They may also be submitted electronically through the commission's public website at [http://www.tabc.texas.gov/laws/proposed\\_rules.asp](http://www.tabc.texas.gov/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, April 28, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendments affect Alcoholic Beverage Code §5.31 and Government Code §2001.039.

*§41.38. Carrier Report.*

(a) Each holder of a carrier ~~[carrier's]~~ permit under Chapter 41 ~~[as provided in §41.04 et seq.,]~~ of the Alcoholic Beverage Code shall make a monthly report ~~[(carrier report)]~~ to the commission on forms prescribed by the ~~executive director~~ ~~[administrator]~~. The report shall be made and filed by the permittee with the commission at its offices ~~in [at]~~ Austin, Texas on or before the 15th day of the month following the calendar month for which the report is made. The report shall give an accurate account of all liquor, wine, ale, and beer transported by the carrier in interstate commerce during the month for which the report is made, and shall state the date of shipment, consignor, point of origin, consignee, destination, freight bill number, number of packages, ~~[ear number and initials,]~~ kind of commodity shipped, and the date of delivery, and shall give all information requested by the form. If no interstate shipments were transported, a report shall be made stating such fact.

(b) This section shall not apply when it is necessary to cross this state in the transportation of an interstate or foreign shipment of liquor, wine, ale, or beer ~~[it is necessary to cross this state]~~.

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

Filed with the Office of the Secretary of State on March 28, 2016.

TRD-201601421

Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: May 8, 2016

For further information, please call: (512) 206-3489



**16 TAC §41.39**

The Texas Alcoholic Beverage Commission proposes amendments to §41.39, relating to Warehouse Report.

Section 41.39 addresses reporting requirements for holders of Bonded Warehouse Permits under Chapter 46 of the Alcoholic Beverage Code.

Under the proposed amendments, reports would be required monthly, instead of within 24 hours of receipt or withdrawal of liquor from the warehouse. The proposed amendments also would incorporate the requirement (currently found in §41.29) that bonded warehouses must store liquor in full and unbroken case lots, as well as well as the procedures currently found in §41.29 to be followed in the event of actual breakage of stored

liquor. The commission is proposing to repeal the text of §41.29 in a separate rulemaking proceeding.

Proposed subsection (b)(4) adds a new requirement that the holder of a Bonded Warehouse Permit affirm on the monthly report that the permittee is in compliance with Alcoholic Beverage Code §46.03, which requires the holder of a Bonded Warehouse Permit to derive at least 50 percent of its gross revenue in a bona fide manner during each three-month period from the storage of goods or merchandise other than liquor. Although the affirmation on the monthly report would be a new requirement under the proposed amendments, the underlying obligation to remain in compliance with Alcoholic Beverage Code §46.03 is not new. The commission believes that the monthly affirmation will be a useful reminder to permit holders of their obligation to maintain the required balance of stored items and that Chapter 46 of the Alcoholic Beverage Code does not authorize liquor-only warehouses.

Section 41.39 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because regulations relating to bonded warehouses will be consolidated and easier for the public to access, and compliance with Chapter 46 of the Alcoholic Beverage Code will be easier to monitor.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.texas.gov/laws/proposed\\_rules.asp](http://www.tabc.texas.gov/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, April 28, 2016 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendments affect Alcoholic Beverage Code §5.31 and Government Code §2001.039.

*§41.39. Bonded Warehouse Report.*

(a) Each holder of a bonded warehouse permit shall make a monthly ~~[daily]~~ report ~~[(warehouse report)]~~ to the commission on forms prescribed by the executive director ~~[administrator]~~.

(b) The report shall be made and filed by the permittee with the commission at its offices in [at] Austin, Texas[; within 24 hours after the receipt of withdrawal of any liquor; provided that no report shall be required for any calendar day during which no liquor is received into or withdrawn from such bonded warehouse]. The report shall [show]:

(1) state the name, address, and permit number of the warehouse;

(2) show the name, address, storage permit number, and class of permit of each customer storing liquor;

~~[(3) units in case lots;]~~

(3) ~~[(4) show monthly [daily] opening inventory receipts, withdrawals and closing inventory in gallons for each class of liquor[; supported by itemized receiving tallies and itemized release orders]; and~~

(4) affirm that the permittee is in compliance with Alcoholic Beverage Code §46.03, which requires the holder of a bonded warehouse permit to derive at least 50 percent of its gross revenue in a bona fide manner during each three month period from the storage of goods or merchandise other than liquor.

~~[(5) the same information for liquor, wines 14% alcohol by volume and under, wines over 14% alcohol by volume and not more than 24% alcohol by volume, wines natural and carbonated and malt liquor.]~~

(c) Such reports shall be signed by the custodian of the bonded warehouse and filed with the commission on or before the 15th day of the month following the calendar month for which the report is made [daily].

(d) A holder of a bonded warehouse permit may only store or offer to store liquor in full and unbroken case lots. [The report for the closing day of each calendar month shall reflect the exact physical inventory of liquor in storage for each permittee and shall be sworn to and acknowledged. A separate report shall be made for each permittee who stores merchandise in the bonded warehouse.]

(e) Except as provided in this subsection, a holder of a bonded warehouse permit may only allow the withdrawal of liquor in full and unbroken case lots. When actual breakage occurs in a bonded warehouse which results in actual loss, the holder of a bonded warehouse permit may allow withdrawal in partial or broken case lots if the bonded warehouse permit holder executes duplicate affidavits documenting the actual breakage. One such affidavit shall be retained on file by the bonded warehouse permit holder, and the other affidavit shall be submitted with the permittee's monthly report required by this section. [Entries on this report shall be made on the date that merchandise is received or withdrawn and shall be kept up to date so that it can be checked by any authorized representatives of the commission at any time during reasonable office hours.]

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

Filed with the Office of the Secretary of State on March 23, 2016.

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Martin Wilson

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Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3489



## 16 TAC §41.43

The Texas Alcoholic Beverage Commission (Commission) proposes amendments to §41.43, relating to Authorization.

As currently written, §41.43 is intended to require that reports filed with the Commission be notarized. However, it incorrectly refers to "section" instead of "subchapter". The proposed amendments would correct that reference, make the language gender neutral, and eliminate the requirement that the reports be notarized. Current Commission practice does not require them to be notarized.

Section 41.43 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The Commission has determined that the need for the section continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the Commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the section will contain the appropriate reference to the rules it covers and will conform to agency practice.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the Commission's public website at [http://www.tabc.texas.gov/laws/proposed\\_rules.asp](http://www.tabc.texas.gov/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the Commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, April 28, 2016, at 1:30 p.m. in the commission meeting room at the Commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendments affect Alcoholic Beverage Code §5.31 and Government Code §2001.039.

§41.43. Required Signature [Authorization].

Each report required by this subchapter [section] shall be signed and affirmed to be true and correct [sworn to] by the permittee or licensee or a [his] duly authorized representative [before a notary public, or other officer authorized to administer oaths].

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

Filed with the Office of the Secretary of State on March 23, 2016.

TRD-201601395

Martin Wilson  
Assistant General Counsel  
Texas Alcoholic Beverage Commission  
Earliest possible date of adoption: May 8, 2016  
For further information, please call: (512) 206-3489



## 16 TAC §41.44

The Texas Alcoholic Beverage Commission (Commission) proposes amendments to §41.44, relating to Copy.

As currently written, §41.44 is intended to require that copies of reports filed with the Commission be retained by the permittee or licensee for two years. However, it incorrectly refers to "section" instead of "subchapter". The proposed amendments would correct that reference.

Section 41.44 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The Commission has determined that the need for the section continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the Commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the section will contain the appropriate reference to the rules it covers and will standardize record retention requirements for certain reports across all categories of alcoholic beverages.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the Commission's public website at [http://www.tabc.texas.gov/laws/proposed\\_rules.asp](http://www.tabc.texas.gov/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the Commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, April 28, 2016, at 1:30 p.m. in the commission meeting room at the Commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendments affect Alcoholic Beverage Code §5.31 and Government Code §2001.039.

*§41.44. Report Retention [Copy].*

An exact copy of each report required by this subchapter [section] shall be retained in the files of the permittee or licensee and shall be kept by said permittee or licensee for a period of at least two years, subject

to inspection of the commission or its authorized representative at all reasonable office hours.

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

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Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3489



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 103. HEALTH AND SAFETY

#### SUBCHAPTER DD. COMMISSIONER'S

#### RULES CONCERNING VIDEO SURVEILLANCE OF CERTAIN SPECIAL EDUCATION SETTINGS

#### 19 TAC §103.1301

The Texas Education Agency proposes new §103.1301, concerning video surveillance of certain special education settings. The proposed new section would reflect the requirements in Texas Education Code (TEC), §29.022, as added by Senate Bill (SB) 507, 84th Texas Legislature, Regular Session, 2015.

In order to promote the safety of students receiving special education and related services in certain self-contained classrooms and other special education settings, SB 507, 84th Texas Legislature, Regular Session, 2015, added TEC, §29.022, to require video surveillance.

Beginning with the 2016-2017 school year, on request by a parent, trustee, or staff member, a school district or open-enrollment charter school must provide video equipment, including video cameras with audio recording capabilities, to campuses. Campuses that receive such equipment must place, operate, and maintain video cameras in certain self-contained classrooms or other special education settings. Video recordings are confidential under the section and may only be released for viewing to certain individuals.

The proposed new section would reflect the requirements in TEC, §29.022, and provide clarification. Specifically, the proposed new rule would specify the special educational settings to which the new law applies; define terms; clarify that special education funds cannot be used to implement the law; include a provision relating to dispute resolution; require that school district boards of trustees and charter school governing bodies adopt policies and procedures to implement the law; and include provisions relating to confidentiality issues and child abuse reporting.

The proposed new section would have no reporting implications. The proposed new section would require school districts and open-enrollment charter schools to adopt policies and procedures to implement TEC, §29.022, as added by SB 507, 84th Texas Legislature, Regular Session, 2015.

FISCAL NOTE. Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the proposed new section is in effect, enforcing or administering the proposed new section has no foreseeable economic implications relating to costs or revenues of the state or local governments. However, the authorizing statute, TEC, §29.022, has fiscal implications for school districts and open-enrollment charter schools.

PUBLIC BENEFIT/COST NOTE. Ms. Martinez has determined that for each year of the first five years the proposed new section is in effect the public benefit anticipated as a result of enforcing the new section would be providing clarification of certain requirements in TEC, §29.022, as added by SB 507, 84th Texas Legislature, Regular Session, 2015. There are no additional costs to individuals required to comply with the proposed new section, and the proposed new section will have no effect on local employment or local economy.

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

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins April 8, 2016, and ends May 9, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.texas.gov](mailto:rules@tea.texas.gov) or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on April 8, 2016.

STATUTORY AUTHORITY. The new section is proposed under the Texas Education Code (TEC), §29.022, as added by Senate Bill (SB) 507, 84th Texas Legislature, Regular Session, 2015, which requires video surveillance in certain special education settings in order to promote student safety. TEC, §29.022(k), authorizes the commissioner to adopt rules to implement and administer TEC, §29.022, including rules regarding the special education settings to which the section applies.

CROSS REFERENCE TO STATUTE. The new section implements the TEC, §29.022, as added by SB 507, 84th Texas Legislature, 2015.

§103.1301. Video Surveillance of Certain Special Education Settings.

(a) Requirement to implement. Beginning with the 2016-2017 school year, in order to promote student safety, on request by a parent, trustee, or staff member, a school district or open-enrollment charter school must provide video equipment to campuses in accordance with Texas Education Code (TEC), §29.022, and this section. Campuses that receive video equipment must place, operate, and maintain video cameras in self-contained classrooms or other special education settings in accordance with TEC, §29.022, and this section.

(b) Definitions. For purposes of TEC, §29.022, and this section, the following terms have the following meanings.

(1) Parent means a person described in TEC, §26.002, whose child receives special education and related services for at

least 50 percent of the instructional day in a self-contained classroom or other special education setting. Parent also means a student who receives special education and related services for at least 50 percent of the instructional day in a self-contained classroom or other special education setting and who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Texas Family Code, Chapter 31, unless the student has been determined to be incompetent or the student's rights have been otherwise restricted by a court order.

(2) Staff member means a teacher, related service provider, paraprofessional, or educational aide assigned to work in a self-contained classroom or other special education setting. Staff member also includes the principal or an assistant principal of the campus at which a self-contained classroom or other special education setting is located.

(3) Trustee means a member of a school district's board of trustees or a member of an open-enrollment charter school's governing body.

(4) Open-enrollment charter school means a charter granted to a charter holder under TEC, §12.101 or §12.152, identified with its own county district number.

(5) Self-contained classroom means a classroom on a regular school campus (i.e., a campus that serves students in general education and students in special education) of a school district or an open-enrollment charter school in which a majority of the students in regular attendance are provided special education and related services and have one of the following instructional arrangements/settings described in the student attendance accounting handbook adopted under §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook):

(A) self-contained (mild/moderate/severe) regular campus;

(B) full-time early childhood (preschool program for children with disabilities) special education setting;

(C) residential care and treatment facility--self-contained (mild/moderate/severe) regular campus;

(D) residential care and treatment facility--full-time early childhood special education setting;

(E) off home campus--self-contained (mild/moderate/severe) regular campus; or

(F) off home campus--full-time early childhood special education setting.

(6) Other special education setting means a classroom on a separate campus (i.e., a campus that serves only students who receive special education and related services) of a school district or open-enrollment charter school in which a majority of the students in regular attendance are provided special education and related services and have one of the following instructional arrangements/settings described in the student attendance accounting handbook adopted under §129.1025 of this title:

(A) residential care and treatment facility--separate campus; or

(B) off home campus--separate campus.

(7) Video camera means a video surveillance camera with audio recording capabilities.

(8) Video equipment means one or more video cameras and any technology and equipment needed to place, operate, and maintain video cameras as required by TEC, §29.022, and this section. Video

equipment also means any technology and equipment needed to store and access video recordings as required by TEC, §29.022, and this section.

(9) Incident means an event or circumstance that:

(A) involves alleged "abuse" or "neglect," as those terms are described in Texas Family Code, §261.001, of a student by an employee of the school district or charter school or alleged "physical abuse" or "sexual abuse," as those terms are described in Texas Family Code, §261.410, of a student by another student; or

(B) allegedly occurred in a self-contained classroom or other special education setting in which video surveillance under TEC, §29.022, and this section is conducted.

(c) Exclusions. A school district or open-enrollment charter school is not required to provide video equipment to a campus of another district or charter school or to a nonpublic school. In addition, the Texas School for the Deaf, the Texas School for the Blind and Visually Impaired, the Texas Juvenile Justice Department, and any other state agency that provides special education and related services to students are not subject to the requirements in TEC, §29.022, and this section.

(d) Use of funds. A school district or open-enrollment charter school may solicit and accept gifts, grants, and donations from any person to implement the requirements in TEC, §29.022, and this section. A district or charter school is not permitted to use Individuals with Disabilities Education Act, Part B, funds or state special education funds to implement the requirements of TEC, §29.022, and this section.

(e) Dispute resolution. The special education dispute resolution procedures in 34 Code of Federal Regulations, §§300.151-300.153 and 300.504-300.515, do not apply to complaints alleging that a school district or open-enrollment charter school has failed to comply with TEC, §29.022, and/or this section. Complaints alleging violations of TEC, §29.022, and/or this section must be addressed through the district's or charter school's local grievance procedures or other dispute resolution channels.

(f) Regular school year and extended school year services. TEC, §29.022, and this section apply to video surveillance during the regular school year. Decisions regarding whether video surveillance will be conducted in self-contained classrooms and other special education settings in which extended school year services are provided are left to local discretion.

(g) Policies and procedures. Each school district board of trustees and open-enrollment charter school governing body must adopt written policies relating to video surveillance under TEC, §29.022, and this section. At a minimum, the policies must include:

(1) a statement that video surveillance is for the purpose of promoting student safety in certain self-contained classrooms and other special education settings;

(2) the procedures for requesting video surveillance;

(3) the procedures for providing written notice to the campus staff and the parents of the students assigned to a self-contained classroom or other special education setting that video and audio surveillance will be conducted in the classroom or setting;

(4) a requirement that video cameras be operated at all times during the instructional day when students are in the self-contained classroom or other special education setting;

(5) a statement regarding the individuals who will have access to video cameras and video recordings and the roles and responsibilities of those individuals;

(6) a requirement that a campus continue to operate and maintain any video camera placed in a self-contained classroom or other special education setting for as long as the classroom or setting continues to satisfy the requirements in TEC, §29.022(a);

(7) a requirement that video cameras placed in a self-contained classroom or other special education setting be capable of recording video and audio of all areas of the classroom or setting, except that no video surveillance may be conducted of the inside of a bathroom or other area used for toileting or diapering a student or removing or changing a student's clothes;

(8) a statement that video recordings must be retained for at least six months after the date the video was recorded;

(9) a statement that the regular or continual monitoring of video is prohibited and that video recordings must not be used for routine teacher evaluation or monitoring or for any purpose other than the promotion of student safety;

(10) at the school district's or open-enrollment charter school's discretion, a requirement that campuses post a notice at the entrance of any self-contained classroom or other special education setting in which video cameras are placed stating that video and audio surveillance are conducted in the classroom or setting;

(11) the procedures for reporting a complaint alleging that an incident occurred in a self-contained classroom or other special education setting in which video surveillance under TEC, §29.022, and this section is conducted;

(12) the local grievance procedures for filing a complaint alleging violations of TEC, §29.022, and/or this section; and

(13) a statement that video recordings made under TEC, §29.022, and this section are confidential and a description of the limited circumstances under which the recordings may be viewed.

(h) Confidentiality of video recordings. A video recording made under TEC, §29.022, and this section is confidential and may only be viewed by the following individuals, to the extent not limited by the Family Educational Rights and Privacy Act of 1974 (FERPA) or other law:

(1) a staff member or other school district or charter school employee or a parent of a student involved in an incident described in subsection (b)(9) of this section that is documented by a video recording for which a complaint has been reported to the district or charter school;

(2) appropriate Texas Department of Family and Protective Services personnel as part of an investigation under Texas Family Code, §261.406;

(3) a peace officer, school nurse, or administrator trained in de-escalation and restraint techniques as provided by commissioner rule or a human resources staff member designated by the school district's board of trustees or open-enrollment charter school's governing body in response to a complaint or an investigation of an incident described in subsection (b)(9) of this section; or

(4) appropriate Texas Education Agency or State Board for Educator Certification personnel or agents as part of an investigation.

(i) Child abuse and neglect reporting. If a person described in subsection (h)(3) or (4) of this section views a video recording and has cause to believe that the recording documents possible abuse or neglect of a child under Texas Family Code, Chapter 261, the person must notify the Texas Department of Family and Protective Services or other authority in accordance with the local policy adopted under

§61.1051 of this title (relating to Reporting Child Abuse and Neglect and Texas Family Code, Chapter 261).

(j) Disciplinary actions and legal proceedings. If a person described in subsection (h)(2), (3), or (4) of this section views a video recording and believes that it documents a possible violation of school district, open-enrollment charter school, or campus policy, the person may allow access to the recording to appropriate legal and human resources personnel of the district or charter school to the extent not limited by FERPA or other law. A recording believed to document a possible violation of school district, open-enrollment charter school, or campus policy may be used in a disciplinary action against district or charter school personnel and must be released in a legal proceeding at the request of a parent of the student involved in the incident documented by the recording.

(k) Access rights. Subsections (i) and (j) of this section do not limit the access of a student's parent to an educational record of the student under FERPA or other law. To the extent any provisions in TEC, §29.022, and this section conflict with FERPA or other federal law, federal law prevails.

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

Filed with the Office of the Secretary of State on March 28, 2016.

TRD-201601437

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: May 8, 2016

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



## TITLE 22. EXAMINING BOARDS

### PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

#### CHAPTER 1. ARCHITECTS

The Texas Board of Architectural Examiners proposes amendments to §1.5, relating to Terms Defined Herein, and repeal of §1.191, relating to Description of Experience Required for Registration by Examination; and §1.192, relating to Additional Criteria.

Under §1.21 and §1.22, the Board requires applicants for architectural registration by examination and reciprocity to complete the Intern Development Program (IDP), which is administered by the National Council of Architectural Registration Boards (NCARB). IDP is a standardized program that is accepted by Texas and most other jurisdictions to demonstrate sufficient experience to be registered as an architect. Recently, NCARB announced an overhaul of the IDP program, scheduled to occur in June of 2016, that will consolidate the seventeen current IDP "experience areas" into six broad practice-based experience areas. Because the Board has previously adopted the seventeen practice areas into rule, the Board must amend its rules in order to maintain consistency with the NCARB IDP program.

Rather than replace the previously adopted rules with the new IDP requirements, the Board proposes to delete the specific description of the IDP requirements in §1.191 and §1.192, and rely

instead on references within §1.21 and §1.22 that applicants must complete the intern development program, which is further defined in §1.5(36) as the internship program established, interpreted, and enforced by NCARB. Relying upon reference to the NCARB program will eliminate needless repetition in the Board's rules, and decrease the possibility of confusion from applicants on whether the Board's requirements differ from those of NCARB.

Additionally, the Board proposes to delete §1.5(37), which contains a definition for "intern development training requirement," which is a redundant term that is made obsolete by the deletion of §1.191 and §1.192.

Lance Brenton, General Counsel, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule and repeals are in effect, the amendment and repeals will have no significant fiscal impact upon state government and no fiscal impact on local government.

Lance Brenton, General Counsel, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule and repeals are in effect, the expected public benefit is to simplify the IDP requirements for applicants who will be required to gain experience in six practice areas opposed to seventeen. Additionally, the deletion of redundancies will simplify the Board's rules.

The proposed rules will have no adverse impact upon those who are required to comply with them. The proposed amendment and repeals will have no negative fiscal impact on small or micro-business. Therefore, no Economic Impact Statement and Regulatory Flexibility Analysis are required.

Comments may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337. Comments must be received by May 10, 2016.

#### SUBCHAPTER A. SCOPE; DEFINITIONS

##### 22 TAC §1.5

###### Statutory Authority

The amendment is proposed pursuant to §1051.202 and §1051.705(a)(2), Texas Occupations Code, which authorizes the Texas Board of Architectural Examiners to implement Chapter 1051, Texas Occupations Code and to prescribe satisfactory architectural experience to sit for the registration examination, respectively.

###### Cross Reference to Statute

The proposed amendment to this rule does not affect any other statutes.

###### §1.5. *Terms Defined Herein.*

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

(1) - (36) (No change.)

~~[(37) Intern Development Training Requirement--Architectural experience necessary for an Applicant to obtain architectural registration by examination in Texas.]~~

~~(37) [(38) Institutional Residential Facility--A building intended for occupancy on a 24-hour basis by persons who are receiving custodial care from the proprietors or operators of the building. Hospitals, dormitories, nursing homes and other assisted living facili-~~

ties, and correctional facilities are examples of buildings that may be Institutional Residential Facilities.

(38) [(39)] Licensed--Registered.

(39) [(40)] Member Board--An architectural registration board that is part of the nonprofit federation of architectural registration boards known as NCARB.

(40) [(41)] NAAB--National Architectural Accrediting Board.

(41) [(42)] National Architectural Accrediting Board (NAAB)--An agency that accredits architectural degree programs in the United States.

(42) [(43)] National Council of Architectural Registration Boards (NCARB)--A nonprofit federation of architectural registration boards from fifty-five (55) states and territories of the United States.

(43) [(44)] NCARB--National Council of Architectural Registration Boards.

(44) [(45)] Nonregistrant--An individual who is not an Architect.

(45) [(46)] Practice Architecture--Perform or do or offer or attempt to do or perform any service, work, act, or thing within the scope of the Practice of Architecture.

(46) [(47)] Practicing Architecture--Performing or doing or offering or attempting to do or perform any service, work, act, or thing within the scope of the Practice of Architecture.

(47) [(48)] Practice of Architecture--A service or creative work applying the art and science of developing design concepts, planning for functional relationships and intended uses, and establishing the form, appearance, aesthetics, and construction details for the construction, enlargement, or alteration of a building or environs intended for human use or occupancy, the proper application of which requires education, training, and experience in those matters.

(A) The term includes:

(i) establishing and documenting the form, aesthetics, materials, and construction technology for a building, group of buildings, or environs intended to be constructed or altered;

(ii) preparing or supervising and controlling the preparation of the architectural plans and specifications that include all integrated building systems and construction details, unless otherwise permitted under Texas Occupations Code, §1051.606(a)(4); and

(iii) observing the construction, modification, or alteration of work to evaluate conformance with architectural plans and specifications described in clause (ii) of this subparagraph for any building, group of buildings, or environs requiring an architect.

(B) The term "practice of architecture" also includes the following activities which, pursuant to Texas Occupations Code §1051.701(a), may be performed by a person who is not registered as an Architect:

(i) programming for construction projects, including identification of economic, legal, and natural constraints and determination of the scope and spatial relationship of functional elements;

(ii) recommending and overseeing appropriate construction project delivery systems;

(iii) consulting, investigating, and analyzing the design, form, aesthetics, materials, and construction technology used for

the construction, enlargement, or alteration of a building or environs and providing expert opinion and testimony as necessary;

(iv) research to expand the knowledge base of the profession of architecture, including publishing or presenting findings in professional forums; and

(v) teaching, administering, and developing pedagogical theory in academic settings offering architectural education.

(48) [(49)] Principal--An architect who is responsible, either alone or with other architects, for an organization's Practice of Architecture.

(49) [(50)] Prototypical--From or of an architectural design intentionally created not only to establish the architectural parameters of a building or facility to be constructed but also to serve as a functional model on which future variations of the basic architectural design would be based for use in additional locations.

(50) [(51)] Public Entity--A state, a city, a county, a city and county, a district, a department or agency of state or local government which has official or quasi-official status, an agency established by state or local government though not a department thereof but subject to some governmental control, or any other political subdivision or public corporation.

(51) [(52)] Registered--Licensed.

(52) [(53)] Registrant--Architect.

(53) [(54)] Regulatory Approval--The approval of Construction Documents by the applicable Governmental Entity after a review of the architectural content of the Construction Documents as a prerequisite to construction or occupation of a building or a facility.

(54) [(55)] Reinstatement--The procedure through which a Surrendered or revoked Texas architectural registration certificate is restored.

(55) [(56)] Renewal--The procedure through which an Architect pays a periodic fee so that the Architect's registration certificate will continue to be effective.

(56) [(57)] Responsible Charge--That degree of control over and detailed knowledge of the content of technical submissions during their preparation as is ordinarily exercised by registered architects applying the applicable architectural standard of care.

(57) [(58)] Revocation or Revoked--The termination of an architectural registration certificate by the Board.

(58) [(59)] Rules and Regulations of the Board--22 Texas Administrative Code §§1.1 et seq.

(59) [(60)] Rules of Procedure of SOAH--1 Texas Administrative Code §§155.1 et seq.

(60) [(61)] Secretary-Treasurer--The member of the Board responsible for signing the official copy of the minutes of each Board meeting and maintaining the record of Board members' attendance at Board meetings.

(61) [(62)] SOAH--State Office of Administrative Hearings.

(62) [(63)] Sole Practitioner--An Architect who is the only design professional to offer or render architectural services on behalf of a business entity.

(63) [(64)] State Office of Administrative Hearings (SOAH)--A Governmental Entity created to serve as an independent

forum for the conduct of adjudicative hearings involving the executive branch of Texas government.

(64) [(65)] Supervision and Control--The amount of oversight by an architect overseeing the work of another whereby:

(A) the architect and the individual performing the work can document frequent and detailed communication with one another and the architect has both control over and detailed professional knowledge of the work; or

(B) the architect is in Responsible Charge of the work and the individual performing the work is employed by the architect or by the architect's employer.

(65) [(66)] Supplemental Document--A document that modifies or adds to the technical architectural content of an existing Construction Document.

(66) [(67)] Surrender--The act of relinquishing a Texas architectural registration certificate along with all privileges associated with the certificate.

(67) [(68)] Sustainable Design--An integrative approach to the process of design which seeks to avoid depletion of energy, water, and raw material resources; prevent environmental degradation caused by facility and infrastructure developments during their implementation and over their life cycle; and create environments that are livable and promote health, safety and well-being. Sustainability is the concept of meeting present needs without compromising the ability of future generations to meet their own needs.

(68) [(69)] TBAE--Texas Board of Architectural Examiners.

(69) [(70)] TDLR--Texas Department of Licensing and Regulation.

(70) [(71)] Texas Department of Licensing and Regulation (TDLR)--A Texas state agency responsible for the implementation and enforcement of the Texas Architectural Barriers Act.

(71) [(72)] Texas Guaranteed Student Loan Corporation (TGSGLC)--A public, nonprofit corporation that administers the Federal Family Education Loan Program.

(72) [(73)] TGSGLC--Texas Guaranteed Student Loan Corporation.

(73) [(74)] Vice-Chair--The member of the Board who serves as the assistant presiding officer and, in the absence of the Chair, serves as the Board's presiding officer. If necessary, the Vice-Chair succeeds the Chair until a new Chair is appointed.

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

Filed with the Office of the Secretary of State on March 28, 2016.

TRD-201601429

Lance Brenton

General Counsel

Texas Board of Architectural Examiners

Earliest possible date of adoption: May 8, 2016

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



## SUBCHAPTER J. INTERN DEVELOPMENT TRAINING REQUIREMENT

## 22 TAC §1.191, §1.192

### Statutory Authority

The repeals are proposed pursuant to §1051.202 and §1051.705(a)(2), Texas Occupations Code, which authorizes the Texas Board of Architectural Examiners to implement Chapter 1051, Texas Occupations Code and to prescribe satisfactory architectural experience to sit for the registration examination, respectively.

### Cross Reference to Statute

The proposed repeals do not affect any other statutes.

§1.191. *Description of Experience Required for Registration by Examination.*

§1.192. *Additional Criteria.*

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

Filed with the Office of the Secretary of State on March 28, 2016.

TRD-201601430

Lance Brenton

General Counsel

Texas Board of Architectural Examiners

Earliest possible date of adoption: May 8, 2016

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



## SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

### 22 TAC §1.22

The Texas Board of Architectural Examiners (Board) proposes the amendment of §1.22, pertaining to registration of architects by reciprocal transfer.

Under Texas Occupations Code §1051.305(a)(1) and §1.22(a)(1), a person may apply for architectural registration by reciprocal transfer if the person holds an architectural registration that is active and in good standing in another jurisdiction, and the other jurisdiction has licensing or registration requirements substantially equivalent to Texas registration requirements. Subsection (b)(1) of the rule states that an applicant can show eligibility by either becoming NCARB certified, or by demonstrating completion of the intern development program (IDP) and the architect registration exam (ARE). The rule does not address any education requirement, which is the "third leg" requirement for Texas registration. Section 1.21, which describes the requirements for registration by examination, requires applicants to have graduated with a professional degree from an educational program accredited by the National Architectural Accreditation Board (NAAB), in addition to completing IDP and the ARE. Because the Board's requirements for registration by examination under §1.21 require an applicant to have graduated with a professional degree from a NAAB-accredited program, the Board has interpreted §1.22(a)(1) to require an applicant to show substantially equivalent education to qualify for registration by reciprocity.

The purpose of the proposed amendment is to provide greater clarity of the Board's process of requiring an applicant for reciprocal registration to either meet all three initial registration requirements, including successful completion of a professional degree

in architecture as described by §1.21(a)(1), or to qualify for registration under §1.22(b)(2), which allows an applicant who does not have a NAAB-accredited degree to demonstrate eligibility through NCARB certification. NCARB certification is a process by which any educational deficiency resulting from the lack of a NAAB-accredited degree is supplemented through demonstration of experience in the relevant practice area. This process allows an applicant to demonstrate substantial equivalence with the Board's eligibility requirements, as required by Texas Occupations Code §1051.305(a)(1) and §1.22(a)(1).

Lance Brenton, General Counsel, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, the amendment will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

Mr. Brenton has determined that, for the first five-year period the amended rule is in effect, the expected public benefit is the removal of ambiguity in the Board's reciprocal registration requirements, the promotion of the public health and safety by requiring appropriate educational backgrounds for reciprocity applicants, and consistency within the Board's rules relating to eligibility requirements for registration by examination and reciprocity, resulting in a substantially equivalent standard for both registration methods.

Applicants required to comply with the amended rule who have not graduated from a NAAB-accredited program will be required to demonstrate NCARB certification in order to qualify for registration by reciprocity.

The amendment to the rule will have no negative fiscal impact on small or micro-business, and no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Comments may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337. Comments must be received by May 10, 2016.

#### Statutory Authority

The amendment is proposed pursuant to Texas Occupations Code §1051.202, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapters 1051, 1052, and 1053 of the Texas Occupations Code; Texas Occupations Code §1051.705, which grants the Board authority to recognize and approve architecture educational programs; and §1051.305, which grants the Board authority to issue registration by reciprocity for an applicant who holds a license or certificate of registration issued by another jurisdiction that has licensing or registration requirements substantially equivalent to those of Texas.

#### Cross Reference to Statute

The proposed amendments to this rule does not affect any other statutes.

#### §1.22. *Registration by Reciprocal Transfer.*

(a) A person may apply for architectural registration by reciprocal transfer if the person holds an architectural registration that is active and in good standing in another jurisdiction and the other jurisdiction:

(1) has licensing or registration requirements substantially equivalent to Texas registration requirements; or

(2) has entered into a reciprocity agreement with the Board that has been approved by the Governor of Texas.

(b) In order to obtain architectural registration by reciprocal transfer, an Applicant must demonstrate the following:

(1) the Applicant has:

(A) successfully completed a professional degree in architecture as described by §1.21(a)(1) of this subchapter;

(B) [~~A~~] successfully completed the Architect Registration Examination (ARE) or another architectural registration examination which the National Council of Architectural Registration Boards (NCARB) has approved as conforming to NCARB's examination standards; and

(C) [~~B~~] successfully completed the requirements of the Intern Development Program (IDP) or acquired at least three years of acceptable architectural experience following registration in another jurisdiction; or

(2) the Applicant has been given Council Certification by NCARB and such Council Certification is not currently in an expired or revoked status.

(c) An Applicant for architectural registration by reciprocal transfer must remit the required registration fee to the Board within 60 days after the date of the tentative approval letter sent to the Applicant by the Board.

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

Filed with the Office of the Secretary of State on March 28, 2016.

TRD-201601428

Lance Brenton

General Counsel

Texas Board of Architectural Examiners

Earliest possible date of adoption: May 8, 2016

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

## PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

### CHAPTER 527. PEER REVIEW

#### 22 TAC §527.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.2, concerning Definitions.

#### Background, Justification and Summary

The amendment to §527.2 adds the definition of "assigned review date," replaces "Peer Review State Board Access" with "Facilitated State Board Access," and includes changes intended to provide clarity.

#### Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

## Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect, the public benefits expected as a result of adoption of the proposed amendment will be a clearer understanding of the terms found in the Peer Review program.

There will be no probable economic cost to persons required to comply with the amendment, and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

## Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any duties or obligations upon small businesses or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

## Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on May 9, 2016.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

## Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

## §527.2. Definitions.

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

(1) "Review" or "review program" means the review conducted under the peer review program.

(2) "Review year" means the one-year (twelve-month) period covered by the review. Engagements selected for review normally would have periods ending during the year under review.

(3) "Sponsoring organization" means an entity that meets the standards specified by the board for administering the review. The board shall periodically publish a list of sponsoring organizations, which have been approved by the board.

(4) "Special reports" include but are not limited to reports issued under professional standards in connection with the following:

(A) specified elements, accounts, or items of a financial statement;

(B) compliance with aspects of contractual agreements or regulatory requirements related to audited financial statements;

(C) financial presentations to comply with contractual agreements or regulatory provisions; or

(D) financial information presented in prescribed forms or schedules that require a prescribed form of auditor's reports.

(5) "Firm inspection program" means the process of firm inspection administered by the PCAOB.

(6) "Rating" of a peer review refers to the type of report issued. The three types of reports are pass, pass with deficiency(ies), or fail. The peer review rating is clearly indicated in the final paragraph of the review report. A peer review report with a rating of pass with deficiency(ies) or fail is considered a deficient review.

(7) "Assigned review date" is the reporting due date to the board of an accepted peer review report. It is the end date of the review process, not the beginning.

(8) [(7)] "Acceptance date" of an AICPA or TSCPA peer review is the date that the sponsoring organization's peer review report committee (PRRC), referred to in §527.9(a)(1) of this chapter (relating to Procedures for a Sponsoring Organization), is presented the peer review report on a review with the rating of pass and the PRRC approves the review. The acceptance date and in this case the completion date of the peer review are the same date and is noted in a letter from the administering entity to the reviewed firm. The PRRC will be presented with the peer review report and the firm's letter of response on reviews with a rating of pass with deficiencies or fail. Ordinarily, the PRRC will require the reviewed firm to take corrective action(s) and those actions will be communicated in a letter to the firm from the administering entity. In this circumstance, the "acceptance date" is defined as the date that the reviewed firm signs the letter from the administering entity agreeing to perform the required corrective action(s).

(9) [(8)] "Completion date" of an AICPA or TSCPA peer review is the date that the sponsoring organization's PRRC, referred to in §527.9(a)(1) of this chapter, is presented the corrective action and the committee decides that the reviewed firm has performed the agreed-to corrective action(s) to the committee's satisfaction and the committee requires no additional corrective action(s) by the firm. The date is noted in a final letter from the administering entity to the reviewed firm.

(10) [(9)] "AICPA Public File" is the file for firms that are members of AICPA's Employee Benefit Plan Audit Quality Center, Governmental Audit Quality Center, or Private Companies Practice Section who post their review information to this public file on AICPA's web site as a membership requirement. Information in the public file includes the firm's most recently accepted peer review report and the firm's response thereto, if any.

(11) [(10)] "Facilitated [Peer Review] State Board Access (FSBA [PRSB])" is the state board limited access web site that provides the most recently accepted peer review report, the firm's letter of response (LOR), the corrective action letter (CAL), and the final letter of acceptance (FLOA).

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

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J. Randel (Jerry) Hill  
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Texas State Board of Public Accountancy  
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## 22 TAC §527.3

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.3, concerning Standards for Peer Reviews and Sponsoring Organizations.

### Background, Justification and Summary

The amendment to §527.3 deletes "SPRPR" and replaces it with "the Standards" in subsection (a).

### Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

### Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect, the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

There will be no probable economic cost to persons required to comply with the amendment, and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

### Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any duties or obligations upon small businesses or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

### Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on May 9, 2016.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

## Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

### §527.3. *Standards for Peer Reviews and Sponsoring Organizations.*

(a) The board adopts Standards for Performing and Reporting on Peer Reviews (the Standards [SPRPR]) promulgated by AICPA and for public company audit firms, the firm inspection standards required under the Sarbanes-Oxley Act of 2002 (SOX), as its minimum standards for review of firms.

(b) Qualified sponsoring organizations shall be the AICPA Peer Review Program, the TSCPA's Peer Review Program and state CPA societies fully involved in the administration of the AICPA Peer Review Program, the PCAOB, and such other entities which are approved by the board.

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

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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



## 22 TAC §527.4

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.4, concerning Enrollment and Participation.

### Background, Justification and Summary

The amendment to §527.4 clarifies that the relevant services are attest services, adds grammatical revisions for clarity, reduces the amount of time to enroll in a peer review program from 12 months to 30 days, designates the executive director with the authority to require an accelerated peer review, requires the firm to notify the Board of any extensions of time to complete a review within 15 days of the extension, submit a request to the Board of a change in sponsoring organization within 30 days of having been rejected by their sponsoring organization, and identifying succeeding firm as a successor firm.

### Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

### Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect, the public benefits expected as a result of adoption of the proposed amendment will be the Board acting

sooner in preventing the issuance of substandard attest services work.

There will be no probable economic cost to persons required to comply with the amendment, and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

#### Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any duties or obligations upon small businesses or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

#### Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on May 9, 2016.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

#### Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

#### §527.4. Enrollment and Participation.

(a) Participation in the program is required of each firm licensed or registered with the board that performs any attest services [~~service or any accounting and/or auditing engagements, including audits, reviews, compilations, forecasts, projections, or special reports~~] as defined in §901.002 of the Act (relating to General Definitions) and §501.52(4), (11) and (23) of this title (relating to Definitions). A firm whose highest level of service is [~~which only performs~~] preparation engagements under SSARS is not required to participate in the program.

(b) A firm that does not perform attest services as set out in subsection (a) of this section shall annually submit a request for the exemption in writing to the board with an explanation of the services offered by the firm. A firm which begins providing attest services as set out in subsection (a) of this section shall notify the board of the change in status within 30 days of the change in status, provide the board with enrollment information within 90 days of the date the services were first provided and have a peer review performed within 18 months of the date the services were first provided.

(c) Each firm required to participate under subsection (a) of this section shall enroll in the applicable programs of an approved sponsoring organization within 30 days [~~12 months~~] from its initial licensing date or the performance of services that require a review. The firm shall adopt the review due date assigned by the sponsoring organization, and must notify the board of the peer review due date within 30 days of its assignment. In addition, the firm shall schedule and begin an additional review within three years of the previous review's due date, or earlier as may be required by the sponsoring organization, ~~or~~ a committee of the board or the board's executive director. It is the responsibility of the firm to anticipate its needs for review services in sufficient time to enable the reviewer to complete the review by the assigned review due date.

(d) In the event that a firm is merged, otherwise combined, dissolved, or separated, the sponsoring organization shall determine which firm is considered the successor [~~succeeding~~] firm. The successor [~~succeeding~~] firm shall retain its peer review status and the review due date.

(e) The board will accept extensions granted by the sponsoring organization to complete a review, provided the board is notified by the firm within 15 [~~20~~] days of the date that an extension is granted.

(f) A firm that has been rejected by a sponsoring organization for any reason must make a request in writing to the board for authorization to enroll in a program of another sponsoring organization. Such request shall be made within 30 days of notification by the sponsoring organization.

(g) A firm choosing to change to another sponsoring organization may do so provided that the firm authorizes the previous sponsoring organization to communicate to the succeeding sponsoring organization any outstanding corrective actions related to the firm's most recent review. Any outstanding actions must be cleared and outstanding fees paid prior to transfer between sponsoring organizations.

(h) An out-of-state firm practicing in this state pursuant to a practice privilege provided for in §901.461 of the Act (relating to Practice by Certain Out-of-State Firms) and §517.1 and §517.2 of this title (relating to Practice by Certain Out of State Firms and Practice by Certain Out of State Individuals) of these regulations must comply with the peer review program of the state in which the firm is licensed.

(i) An out-of-state firm practicing in this state pursuant to a practice privilege from a state without a peer review program must comply with §901.159 of the Act (relating to Peer Review) and Chapter 517 of this title (relating to Practice by Certain Out-of-State Firms and Individuals).

(j) An out-of-state firm practicing in this state pursuant to a practice privilege must submit its peer review (or equivalent) documentation upon request of the board.

(k) Interpretive Comment. If a firm is subject to inspections pursuant to PCAOB and also performs attest work not subject to such inspections, the firm must enroll in a peer review program for review of its non-public company attest work in addition to the firm inspection program required by the PCAOB.

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

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Texas State Board of Public Accountancy  
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## 22 TAC §527.5

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.5, concerning Successive Deficient Reviews.

### Background, Justification and Summary

The amendment to §527.5 will make it clearer that the Board has the authority to take action after only one deficient peer review. The Board action could include an accelerated review but could also include removing attest services from the firm's practice in addition to imposing a sanction. If, however, a firm fails two consecutive peer reviews the proposed changes would not allow the firm to provide attest services except to complete the services it had already begun and then only after a pre-issuance review by a third party of the firm's work. The amendment also states that a firm that has been taken out of attest work, but allowed to complete work it had already begun, be given up to 60 days as opposed to 30 days as proposed, to close out the engagement.

### Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

### Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be the Board acting sooner in preventing the issuance of substandard attest services work.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

### Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any duties or obligations upon small businesses or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

### Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on May 9, 2016.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have

an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

### Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

### §527.5. *[Successive] Deficient Reviews.*

(a) The board at its sole discretion may require a firm which has received a rating of pass with deficiencies or fail to have an accelerated peer review or subject it to any other disciplinary or corrective action under the Act.

(b) ~~[(a)]~~ A firm, including a successor [succeeding] firm, which receives two consecutive reviews on a system or engagement review with ratings [a rating] of either pass with deficiencies or [and/or] fail in any order, or two pass with deficiencies shall [on a system or engagement review may] be required to have an accelerated review [by the Peer Review Committee].

~~[(b)]~~ If that accelerated review results in a rating of pass with deficiencies or fail:

(1) the firm may complete attest engagements for which field work has already begun only if:

(A) prior to issuance of any report, the engagement is reviewed and approved by a third party reviewer acceptable to the chairman of the Technical Standards Review Committee or the Peer Review Committee; and

(B) the engagement is completed within 60 [30] days of the acceptance of the peer review report[; and LOR by the sponsoring organization; and

(2) the firm shall not perform any other attest services [service including any accounting and/or auditing engagements, including, audits, reviews, compilations (as well as compilations where no report is required), forecasts, projections, or other special reports] for a period of three years or until given permission by the board to resume this practice.

(c) A firm, including a successor firm, which receives two consecutive reviews with a rating of fail on a system or engagement review shall not perform any other attest services for a period of three years or until given permission by the board to resume this practice. The firm may complete attest engagements for which field work has already begun only if:

(1) prior to issuance of any report, the engagement is reviewed and approved by a third party reviewer acceptable to the chairman of the Technical Standards Review Committee or the Peer Review Committee; and

(2) the engagement is completed within 60 days of the acceptance of the peer review report and LOR by the sponsoring organization.

(d) [(e)] A firm may petition the board in writing for a waiver from the provisions of this rule.

[(d) The board at its discretion may require a firm which has received a rating of pass with deficiencies or fail to have an accelerated peer review or subject it to any other disciplinary or corrective action under the Act.]

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

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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



## 22 TAC §527.6

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.6, concerning Reporting to the Board.

### Background, Justification and Summary

The amendment to §527.6 will delete "PRsBA" and replace it with "FSBA."

### Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

### Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

### Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any duties or obligations upon small businesses or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

### Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to

his attention at (512) 305-7854, no later than noon on May 9, 2016.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

### Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

### §527.6. Reporting to the Board.

(a) A firm must submit to the board:

(1) a copy of the peer review report and the FLOA from the sponsoring organization, if such report has a rating of pass;

(2) a copy of the peer review report, the firm's LOR, the CAL, and FLOA if the report has a rating of pass with deficiencies or fail; or

(3) a copy of any final report resulting from any inspection by the PCAOB firm inspection program together with documentation of any significant deficiencies and findings and the firm's response.

(b) Any report or document submitted to the board under this section is confidential pursuant to the Act.

(c) Any report or document (collectively referred to as "documents") required to be submitted under subsection (a) of this section shall be filed with the board as provided below:

(1) Peer review documents will be made available by the TSCPA for firms enrolled in the AICPA and TSCPA Peer Review Programs and administered by the TSCPA. Peer review documents will be made available by the TSCPA by posting such documents within 30 days of issuing its notice of acceptance to such firms on the FSBA [PRsBA] web site. The reviewed firm must, within 10 days of receipt of the notice of completion from the TSCPA, complete the board's Peer Review Compliance Reporting form and submit it to the board along with the required documents.

(2) Firms otherwise enrolled in the AICPA peer review program (including those whose peer reviews are administered by the NPRC) must, within 10 days of receipt of the notice of completion from the sponsoring organization, complete the board's Peer Review Compliance Reporting form and submit it to the board along with the required documents. However, this requirement may be met by allowing the firm's peer review documents to be posted on the FSBA [PRsBA] web site, with access granted to the board within 30 days of issuing its notice of acceptance to such firms on the FSBA [PRsBA] web site.

(3) Firms enrolled in the PCAOB firm inspection program must, within 10 days of receipt of the notice of completion from the

PCAOB, complete the board's Peer Review Compliance Reporting form and submit it to the board along with the required documents.

(d) The information required under subsection (c) of this section must be filed with the board either by mail or electronically such as by fax, email, or FSBA [PRSBA] web site.

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

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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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## 22 TAC §527.7

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.7, concerning Peer Review Oversight Board.

### Background, Justification and Summary

The amendment to §527.7 will delete language in subsections (a) and (f) to more closely follow the language found in §527.3.

### Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

### Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

### Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any duties or obligations upon small businesses or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

### Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on May 9, 2016.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have

an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

### Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

### §527.7. Peer Review Oversight Board.

(a) The board shall retain the Peer Review Oversight Board (PROB) for the purpose of:

(1) monitoring sponsoring organizations to provide reasonable assurance that peer reviews are being conducted and reported in accordance with the Standards [~~for Performing and Reporting on Peer Reviews (the Standards)~~] promulgated by the AICPA Peer Review Board;

(2) reviewing the policies and procedures of sponsoring organization applicants as to their conformity with the peer review standards; and

(3) reporting to the board on the conclusions and recommendations reached as a result of performing the functions in paragraphs (1) and (2) of this subsection.

(b) Information concerning a specific firm or reviewer obtained by the PROB during oversight activities shall be confidential, and the firm's or reviewer's identity shall not be reported to the board. Reports submitted to the board will not contain information concerning specific firms or reviewers. Members of the PROB will be required to execute a confidentiality statement for the sponsoring organization which they oversee.

(c) The PROB shall consist of three members who are active licensed Texas CPAs. No member of the PROB shall be current members of the board or one of its committees, the TSCPA's Peer Review or Professional Conduct Committee, or the AICPA Professional Ethics Executive Committee (including subcommittees). The members should have extensive experience in accounting and auditing and currently be in the practice of public accountancy at the partner (or equivalent) level, and shall be members of the TSCPA or the AICPA. The member's firm must have received a report with a rating of pass or an unmodified opinion from its last peer review. Compensation of PROB members shall be set by the board.

(d) The PROB shall make an annual recommendation to the board as to the qualifications of an approved sponsoring organization to continue as an approved sponsoring organization on the basis of the results of the following procedures:

(1) Where the sponsoring organization is the AICPA/NPRC, state CPA societies other than Texas, fully involved in the administering AICPA Peer Review Program, or the PCAOB,

PROB shall review the published reports of those entities or successors, to determine that there is an acceptable level of oversight;

(2) Where the sponsoring organization is other than those listed in paragraph (1) of this subsection, PROB shall perform the following functions:

(A) At least one member of the PROB shall attend all meetings of each sponsoring organization's PRRC. Certain PRRC meetings may be conducted via telephone. In those instances, the PROB may join the conference call.

(B) During such visits, the PROB shall:

(i) meet with the organization's peer review committee during the committee's consideration of peer review documents;

(ii) evaluate the organization's procedures for administering the peer review program;

(iii) examine, on the basis of a random selection or other criteria adopted by PROB, a number of reviews performed by the organization to include, at a minimum, a review of the report on the peer review, the firm's response to the matters discussed, the sponsoring organization's FLOA outlining any additional corrective or monitoring procedures, and the required technical documentation maintained by the sponsoring organization on the selected reviews; and

(iv) expand the examination of peer review documents if significant deficiencies, problems, or inconsistencies are encountered during the analysis of the materials.

(e) In the evaluation of policies and procedures of sponsoring organization applicants, the PROB shall:

(1) examine the policies as drafted by the applicant to determine that they will provide reasonable assurance of conforming with the standards for peer reviews;

(2) evaluate the procedures proposed by the applicant to determine that:

(A) assigned reviewers are appropriately qualified to perform the review for the specific firm;

(B) reviewers are provided with appropriate materials;

(C) the applicant has provided for consulting with the reviewers on problems arising during the review and that specified occurrences requiring consultation are outlined;

(D) the applicant has provided for the assessment of the results of the review; and

(E) the applicant has provided for an independent report acceptance body that considers and accepts the reports of the review and requires corrective actions by firms with significant deficiencies;

(3) make recommendations to the board as to approval of the applicant as a sponsoring organization.

(f) Annually the PROB shall provide the board's Peer Review Committee with a report on the continued reliance of sponsoring organizations' peer reviews. The PROB report shall provide reasonable assurance that peer reviews are being conducted and reported on consistently and in accordance with the Standards [~~for Performing and Reporting on Peer Reviews (the Standards)~~] promulgated by the AICPA Peer Review Board. A summary of oversight visits shall be included with the annual report.

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

Filed with the Office of the Secretary of State on March 24, 2016.

TRD-201601413

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: May 8, 2016

For further information, please call: (512) 305-7842



## 22 TAC §527.10

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.10, concerning Peer Review Report Committee.

### Background, Justification and Summary

The amendment to §527.10 deletes the word "accounting" in paragraph (1) and replaces it with "assurance," deletes the phrase "or an unmodified report" in the same paragraph, and deletes language concerning AICPA standards to more closely follow the language found in §527.3

### Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

### Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

### Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any duties or obligations upon small businesses or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

### Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on May 9, 2016.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small busi-

nesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

#### Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

#### §527.10. Peer Review Report Committee.

A PRRC is comprised of CPAs practicing public accountancy and formed by a sponsoring organization for the purpose of accepting peer review reports submitted by firms on peer review engagements.

(1) Each member of a PRRC must be active in the practice of public accountancy at a supervisory level in the assurance [accounting] or auditing function while serving on the committee. The member's firm must be enrolled in an approved practice-monitoring program and have received a report with a rating of pass [or an unmodified report] on its most recently completed peer review. A majority of the committee members must satisfy the qualifications required of system peer review team captains as established and reported in the AICPA Standards [for Performing and Reporting on Peer Reviews].

(2) Each member of a PRRC must be approved for appointment by the governing body of the sponsoring organization.

(3) In determining the size of a PRRC, the requirement for broad industry experience, and the likelihood of some members needing to recuse themselves during the consideration of some reviews as a result of the members' close association to the firm or because they performed the review, shall be considered.

(4) No more than one PRRC member may be from the same firm.

(5) The PRRC members' terms shall be staggered to provide for continuity.

(6) A PRRC member may not concurrently serve as:

(A) a member of any state's board of accountancy; or

(B) a member of any state's CPA society's ethics committee.

(7) A PRRC member may not participate in any discussion or have any vote with respect to a reviewed firm when the committee member lacks independence as defined in §501.70 of this title (relating to Independence) or has a conflict of interest. Examples of conflicts of interest include, but are not limited to:

(A) the member's firm has performed the most recent peer review of the reviewed firm's accounting and auditing practice;

(B) the member served on the review team, which performed the current or the immediately preceding review of the enrolled firm; or

(C) the member believes he cannot be impartial or objective.

(8) Each PRRC member must comply with the confidentiality requirements of §901.161 of the Act (relating to Privilege for Certain Information). The sponsoring organization may annually re-

quire its PRRC members to sign a statement acknowledging their appointments and the responsibilities and obligations of their appointments.

(9) A PRRC decision to accept a report must be made by not fewer than three members who satisfy the above criteria.

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

Filed with the Office of the Secretary of State on March 24, 2016.

TRD-201601414

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: May 8, 2016

For further information, please call: (512) 305-7842



## 22 TAC §527.11

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.11, concerning Responsibilities of Peer Review Report Committee.

### Background, Justification and Summary

The amendment to §527.11 deletes language in paragraph (1) to more closely follow the language found in §527.3 and deletes the word "insuring" and replaces it with "ensuring" in paragraph (7).

### Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

### Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

### Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any duties or obligations upon small businesses or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

### Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on May 9, 2016.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

#### Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§527.11. *Responsibilities of Peer Review Report Committee.*

The PRRC shall:

(1) establish and administer the sponsoring organization's peer review program in accordance with the AICPA Standards [~~for Performing and Reporting on Peer Reviews~~];

(2) prescribe actions designed to assure correction of the deficiencies in the reviewed firm's system of quality control policies and procedures;

(3) monitor the prescribed remedial and corrective actions to determine compliance by the reviewed firm;

(4) resolve instances in which there is a lack of cooperation and agreement between the committee and review teams or reviewed firms in accordance with the sponsoring organization's adjudication process;

(5) act upon requests from firms for changes in the timetable of their reviews;

(6) appoint members to subcommittees and task forces as necessary to carry out its functions;

(7) establish and perform procedures for ensuring [~~insuring~~] that reviews are performed and reported on in accordance with the AICPA Standards for Performing and Reporting on Peer Reviews;

(8) establish a report acceptance process, which facilitates the exchange of viewpoints among committee members;

(9) communicate to the governing body of the sponsoring organization on a recurring basis:

(A) problems experienced by the enrolled firms in their systems of quality control as noted in the peer reviews conducted by the sponsoring organization;

(B) problems experienced in the implementation of the peer review program; and

(C) a summary of the historical results of the peer review program.

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

Filed with the Office of the Secretary of State on March 24, 2016.

TRD-201601415

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: May 8, 2016

For further information, please call: (512) 305-7842

## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 200. REPORTING OF HEALTH CARE-ASSOCIATED INFECTIONS AND PREVENTABLE ADVERSE EVENTS

##### SUBCHAPTER B. HEALTHCARE SAFETY ADVISORY COMMITTEE

#### 25 TAC §200.40

The Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (department), proposes new §200.40, concerning the Healthcare Safety Advisory Committee.

#### BACKGROUND AND PURPOSE

Senate Bill (SB) 200 and SB 277, 84th Legislature, Regular Session, 2015, directed the Executive Commissioner of the HHSC to establish and maintain advisory committees to address major health and human services issues and to adopt rules to govern the advisory committee's purpose, tasks, reporting requirements, and date of abolition. As part of health and human services (HHS) system-wide inventory and analysis, the Healthcare Safety Advisory Committee (formerly known as the Health Care-associated Infections and Preventable Adverse Events (HAI/PAE) Advisory Panel) has been identified for rulemaking.

SB 277 amended the Health and Safety Code, Chapter 98, Reporting of Health Care-associated Infections (HAI) and Preventable Adverse Events (PAE), by removing the HAI/PAE Advisory Panel from the statute. The advisory panel serves a critical role to obtain stakeholder feedback on programmatic activities and initiatives. Most recently, the panel has participated in guidance document creation contributing to the clarity of reporting for PAEs which kept the initiative on schedule for implementation. The new rule describes the operations of the Healthcare Safety Advisory Committee including the purpose, tasks, reporting requirements, membership composition, and meeting schedules. This panel has been in existence with regular meetings since 2005.

#### SECTION-BY-SECTION SUMMARY

New §200.40 establishes the Healthcare Safety Advisory Committee. The new rule (1) identifies the statutory authority of the panel; (2) outlines the committee's purpose; (3) describes tasks; (4) outlines the reporting requirements; (5) gives date of aboli-

tion; (6) establishes membership composition and qualifications; and (7) establishes meeting schedules.

#### FISCAL NOTE

Ms. Janna Zumbrun, Assistant Commissioner, Division for Disease Control and Prevention Services, has determined that for each year for the first five years that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Zumbrun has also determined that there will not be an adverse economic impact on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section.

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

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

#### PUBLIC BENEFIT

In addition, Ms. Zumbrun has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section is for ongoing stakeholder opinion and public comments on activities related to the Emerging and Acute Infectious Disease Branch Healthcare Safety Program activities.

#### REGULATORY ANALYSIS

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

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Comments or questions on the proposal may be submitted to Vickie Gillespie, Preventable Adverse Events Clinical Analyst, Healthcare Safety Program, Division of Disease Control and Prevention Services, Department of State Health Services, Mail Code 1960, P.O. Box 149347, Austin, Texas 78714-9347, (512) 776-6878 or Vickie.Gillespie@dshs.state.tx.us. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rule has been reviewed by legal counsel and found to be within the states agencies' legal authority to adopt.

#### STATUTORY AUTHORITY

This new rule is authorized by the Government Code, §531.012, which requires the department to adopt rules necessary to establish the Advisory Committee, and by Chapter 2110 in general; and 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 new rule affects Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

#### §200.40. Healthcare Safety Advisory Committee.

(a) The committee. The Healthcare Safety Advisory Committee (committee) is appointed under and governed by this section.

(b) Applicable law. The committee is subject to Texas Government Code, Chapter 2110.

(c) Purpose. The purpose of the committee is to provide a forum to obtain stakeholder input on program initiatives and proposals for consideration by the Emerging and Acute Infectious Disease Branch (EAIDB) of the Texas Department of State Health Services.

(d) Tasks.

(1) The committee provides stakeholder feedback related to program initiatives.

(2) The committee participates in workgroups to develop guidance related to program activities as requested by EAIDB.

(e) Reports to the department.

(1) The committee files an annual written report with the Executive Commissioner.

(A) The report includes:

(i) the meeting dates of the committee;

(ii) the member attendance records;

(iii) a brief description of actions taken by the committee;

(iv) committee accomplishments;

(v) the status of any committee recommended rules for consideration by the department and the commission;

(vi) anticipated committee activities of the committee; and

(vii) any amendments to this section requested by the committee.

(viii) identifies the costs related to the committee, including the cost of agency staff time spent in support of the committee's activities and the source of funds used to support the committee's activities.

(B) The report covers the meetings and activities in the immediate preceding calendar year and is filed with the HHSC Executive Commissioner each February of the following calendar year.

(2) The committee files an annual written report with the Texas Legislature regarding any policy recommendations made to the HHSC Executive Commissioner.

(f) Date of abolition. The committee is abolished September 1, 2020.

(g) Composition.

(1) The committee is composed of 13 (voting and non-voting) members appointed by the Executive Commissioner.

(2) The composition of the committee includes:

(A) two infection prevention and control professionals who:

(i) are certified by the Certification Board of Infection Control and Epidemiology; and

(ii) are practicing in a healthcare facility in this state;

(B) two healthcare safety professionals who:

(i) are practicing in a healthcare facility in this state;

and

(ii) are employed as professionals in quality assessment and performance improvement;

(C) three board-certified physicians who:

(i) are licensed to practice medicine in this state under Texas Occupations Code, Chapter 155;

(ii) have active medical staff privileges at a healthcare facility in this state; and

(iii) have demonstrated expertise in the area(s) of quality assessment and performance improvement, healthcare safety, health care epidemiology, antimicrobial resistance activities, or infection control in health care facilities;

(D) two healthcare facility administrators;

(E) one licensed pharmacist in this state who:

(i) has experience in systems to reduce medication errors and in antibiotic stewardship activities; and

(ii) is practicing in a healthcare facility in this state;

(F) one nonvoting member who is a department employee representing the licensing of hospitals or ambulatory surgical centers; and

(G) two members who represent the public as consumers.

(3) Geographic representation will be considered among equally qualified appointees for each committee position.

(h) Terms of office. Except as may be necessary to stagger terms, the term of office of each member is two years.

(1) Members are appointed so that the terms of members expire on December 31st of each even-numbered year.

(2) If a vacancy occurs, a person is appointed to serve the unexpired portion of that term.

(i) Officers. The committee selects a presiding officer and an assistant presiding officer from its members.

(1) The presiding officer and assistant presiding officer serve until December 31st of each even-numbered year. Both the

presiding officer and the assistant presiding officer may retain office until his or her replacement is appointed.

(2) The presiding officer:

(A) presides at all committee meetings in which he or she is in attendance;

(B) calls meetings in accordance with this section;

(C) appoints subcommittees of the committee as necessary;

(D) causes proper reports to be made to the Executive Commissioner; and

(E) may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer performs the duties of the presiding officer in case of the absence or disability of the presiding officer. If the office of presiding officer becomes vacant, the assistant presiding officer serves as presiding officer until the committee selects a new presiding officer.

(4) A member shall serve no more than two consecutive terms as presiding officer or assistant presiding officer.

(5) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(i) Meetings. The committee meets as necessary as determined by the department, up to four times per year, to conduct business.

(1) The committee meets at the call of the presiding officer.

(2) Meeting arrangements are made by department staff.

(3) The committee is not a "governmental body" as defined in the Open Meetings Act, Texas Government Code, Chapter 551. Meetings may be conducted in person, through teleconference call, or by means of other technology.

(4) The committee provides stakeholder feedback only. The committee has no authority to conduct "official business" on the part of the department.

(5) The agenda for each committee meeting includes an opportunity for new business or for any member to address the committee on matters relating to committee business.

(6) The agenda for each committee meeting also includes an item entitled public comment under which any person is allowed to address the committee on matters relating to business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(k) Attendance. Members attend committee meetings as scheduled.

(1) A member notifies the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member:

(A) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability;

(B) is absent from more than half of the committee meetings during a calendar year; or

(C) is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when grounds for removal of a member exists per paragraph (2) of this subsection.

(l) Staff. Staff support for the committee is provided by the department.

(m) Procedures. Roberts Rules of Order are the basis of parliamentary decisions, except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present, once quorum is established.

(2) Each member has one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee makes decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting are taken by department staff and approved by the committee at the next scheduled meeting.

(n) Statement by members.

(1) The commission, the department, and the committee are not bound in any way by any statement, recommendation, or action on the part of any committee member, except when a statement or action is in pursuit of specific instructions from the commission, the department, or the committee.

(2) The committee and its members may not participate in legislative activity in the name of the commission, the department, or the committee except with approval through the commission's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(3) A committee member may not accept or solicit any benefit that might reasonably tend to influence the member in the discharge of the member's official duties.

(4) A committee member may not disclose confidential information acquired through his or her committee membership.

(5) A committee member may not knowingly solicit, accept, or agree to accept any benefit for having exercised the member's official powers or duties in favor of another person.

(6) A committee member who has a personal or private interest in a matter pending before the committee must publicly disclose the fact in a committee meeting and may not vote or otherwise participate in the matter. The phrase "personal or private interest" means the committee member has a direct pecuniary interest in the matter, but does not include the committee member's engagement in a profession, trade, or occupation when the member's interest is the same as all others similarly engaged in the profession, trade, or occupation.

(o) Reimbursement for expenses. In accordance with the requirements set forth in Texas Government Code, Chapter 2110, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

(1) Only travel expenses for the two consumer representatives are reimbursed for each meeting attended.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) Each member who is to be reimbursed for expenses submits to department staff the member's receipts for expenses and any required official forms not later than 14 days after each committee meeting.

(4) Requests for reimbursement of expenses are made on official state vouchers prepared by department staff.

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

Filed with the Office of the Secretary of State on March 28, 2016.

TRD-201601420

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: May 8, 2016

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



## CHAPTER 411. STATE MENTAL HEALTH AUTHORITY RESPONSIBILITIES

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §§411.1 - 411.4, 411.7, 411.12, 411.20, and 411.21, concerning Advisory Committees, and proposes new §411.1 and §411.3, concerning the Joint Committee on Access and Forensic Services.

### BACKGROUND AND PURPOSE

The proposed repeals of §§411.1 - 411.4, 411.7, 411.12, 411.20, and 411.21 will comply with Senate Bill (SB) 277, 84th Legislature, Regular Session, 2015, which amended Health and Safety Code, §571.027, by abolishing the Inpatient Mental Health Services Advisory Committee in §411.12. The committee was one of several advisory committees recommended for abolishment by the Sunset Advisory Commission during the 2014 review of the department. The committee is inactive and has no active members. It was statutorily directed to provide the department with advice on issues and policies concerning mental health services in private mental hospitals and psychiatric units of general hospitals, coordination and communication regarding interpretation and enforcement of policies, and training for surveyors or investigators.

In addition, the repeals are necessary to comply with SB 200, 84th Legislature, Regular Session, 2015, which amended Health and Safety Code, §531.012, by requiring the Executive Commissioner to establish and maintain advisory committees to consider issues and solicit public input across major areas of the health and human services system, including behavioral health. While not mentioned in either of these statutes, it was determined the Mental Health Planning and Advisory Council in §411.7, currently referred to as the Council for Advising and Planning (CAP) for the Prevention and Treatment of Mental and Substance Use Disorders will be reconstituted as a subcommittee of the Behavioral Health Advisory Committee to meet requirements for a mental health planning council under federal law in 42 U.S.C. §300x-3.

New §411.1 and §411.3 are necessary to comply with SB 1507, 84th Legislature, Regular Session, 2015, which added Health and Safety Code, §532.0131 and §533.051(c). The new legislation requires the department to establish rules that govern both a forensic work group tasked with making recommendations relating to the effective coordination of forensic services and an advisory panel tasked with establishing the allocation methodology of outpatient mental health services and beds. It was determined these two committees will be combined into one joint committee.

#### SECTION-BY-SECTION SUMMARY

Section 411.1 is proposed to be repealed in order to remove references to outdated terminology for the "Texas Department of Mental Health and Mental Retardation" and to reorganize the rule text. References to the "Department of State Health Services" and Texas Government Code, Chapter 2110, will be included in new §411.1 and §411.3.

Section 411.2 is proposed to be repealed in order to remove references to outdated terminology for "Texas Department of Mental Health and Mental Retardation."

Section 411.3 is proposed to be repealed concerning outdated definitions. New definitions are included in the new §411.1.

Section 411.4 is proposed to be repealed concerning the outdated advisory committee requirements and new requirements are included in new §411.3.

Section 411.7 is proposed to be repealed which requires this committee be abolished on January 1, 2012, unless abolished on an earlier date or reauthorized.

Section 411.12 is proposed to be repealed as a result of the abolished Inpatient Mental Health Services Advisory Committee.

Section 411.20 is proposed to be repealed as the statutory authority will be revised and included in the new §411.3.

Section 411.21 is proposed to be repealed to remove the outdated distribution of the advisory committees and will not be included in the new proposed rules.

New §411.1 contains definitions for the subchapter and new §411.3 sets forth the statutory authority, applicability, purpose, tasks, reporting requirements, abolition, membership, quorum and presiding officers of the Joint Committee on Access and Forensic Services.

The title of Subchapter A has been revised to reflect "Joint Committee on Access and Forensic Services" instead of "Advisory Committees."

#### FISCAL NOTE

Ms. Lauren Lacefield Lewis has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to the state or local governments as a result of enforcing or administering the sections as proposed.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Lacefield Lewis has determined that there will not be an effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections as proposed.

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

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

#### PUBLIC BENEFIT

In addition, Ms. Lacefield Lewis has also determined that for each year of the first five years that the sections will be in effect, the public will benefit as a result of adoption of rules for the new Joint Committee on Access and Forensic Services because consistent rules will ensure that policies and decisions made by the committee are governed by accepted standards, accessible to the public and informed by committee members representing a diverse group of stakeholder and experts. The public benefit anticipated from enforcing or administering the repealed sections is to remove rules from the department's rules database that are moving to another agency.

#### REGULATORY ANALYSIS

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

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Carissa Dougherty, Department of State Health Services, P.O. Box 149347, Mail Code 2018, Austin, Texas 78714-9347, (512) 206-5347, or by email to Carissa.Dougherty@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

#### SUBCHAPTER A. ADVISORY COMMITTEES

##### 25 TAC §§411.1 - 411.4, 411.7, 411.12, 411.20, 411.21

#### STATUTORY AUTHORITY

The repeals are authorized by Health and Safety Code, §531.0131 and §533.051(c), which define membership requirements and prescribe duties of the Joint Committee on Access and Forensic Services; Health and Safety Code, §533.0515, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules as necessary to implement its provisions; and Government Code, §532.012, which authorizes the Executive Commissioner to adopt rules for advisory committees. The rules are authorized by Government Code, §531.0055 and Health and Safety Code, §1001.075,

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

The repeals affect Government Code, Chapters 531, 532 and 533; and Health and Safety Code, Chapter 1001.

*§411.1. Purpose.*

*§411.2. Applications.*

*§411.3. Definitions.*

*§411.4. Advisory Committee Requirements.*

*§411.7. Mental Health Planning and Advisory Council.*

*§411.12. Inpatient Mental Health Services Advisory Committee.*

*§411.20. References.*

*§411.21. Distribution.*

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

Filed with the Office of the Secretary of State on March 28, 2016.

TRD-201601435

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: May 8, 2016

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



## SUBCHAPTER A. JOINT COMMITTEE ON ACCESS AND FORENSIC SERVICES

### 25 TAC §411.1, §411.3

The new rules are authorized by Health and Safety Code, §531.0131 and §533.051(c), which define membership requirements and prescribe duties of the Joint Committee on Access and Forensic Services; Health and Safety Code, §533.0515, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules as necessary to implement its provisions; and Government Code, §532.012, which authorizes the Executive Commissioner to adopt rules for advisory committees. The rules are authorized by Government Code, §531.0055 and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The new rules affect Government Code, Chapters 531, 532 and 533; and Health and Safety Code, Chapter 1001.

*§411.1. Definitions.*

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

(1) DSHS--The Texas Department of State Health Services.

(2) Executive Commissioner--The HHSC Executive Commissioner or his or her designee.

(3) HHSC--The Texas Health and Human Services Commission or its designee.

*§411.3. Joint Committee on Access and Forensic Services.*

(a) Statutory authority. This section is authorized by:

(1) Texas Health and Safety Code, §531.0131 and §533.051(c), which define membership requirements and prescribe duties of the Joint Committee on Access and Forensic Services (JCAFS);

(2) Texas Health and Safety Code, §533.0515, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules as necessary to implement its provisions; and

(3) Texas Government Code, §531.012, which authorizes the Executive Commissioner to adopt rules for advisory committees.

(b) Applicability. Texas Government Code, Chapter 2110 and Texas Government Code, Chapter 551, apply to the JCAFS.

(c) Purpose. The purposes of the JCAFS are:

(1) to make recommendations for a comprehensive plan for effective coordination of forensic services;

(2) to make recommendations and monitor implementation of updates to a bed day allocation methodology; and

(3) to make recommendations and monitor implementation of an utilization review protocol for state funded beds in hospitals and other inpatient mental health facilities.

(d) Tasks. The JCAFS considers and makes recommendations to the Executive Commissioner consistent with the committee's purpose as stated in subsection (c) of this section.

(e) Reporting requirements.

(1) The JCAFS files an annual written report with the Executive Commissioner by December 1st of each year. The report includes:

(A) the committee's meeting dates for the previous fiscal year;

(B) the activities it has completed to achieve the defined purpose; and

(C) the committee's recommendations.

(2) The JCAFS files an annual written report with the Texas Legislature by December 1st of each year that includes any policy recommendations made to the Executive Commissioner.

(3) In accordance with Texas Health and Safety Code, §533.0515, the committee sends a proposal for an updated bed day allocation methodology and bed day utilization review protocol to the Executive Commissioner no later than December 1st of each even-numbered year.

(4) In accordance with Texas Health and Safety Code, §532.0131, the committee submits a report with recommendations concerning the creation of a comprehensive plan for coordination of forensic services to the lieutenant governor, the speaker of the house of representatives, and the standing committees of the senate and the house of representatives with primary jurisdiction over forensic services no later than July 1, 2016.

(f) Abolition. Unless reauthorized, the committee is abolished on November 1, 2019.

(g) Membership.

(1) Number of members. The JCAFS is composed of 24 members nominated by the designating organization and appointed by the Executive Commissioner. The membership includes:

(A) two representatives designated by DSHS, including a superintendent of a state hospital with a maximum security forensic unit;

(B) two representatives designated by the Texas Department of Criminal Justice, including a representative of the Texas Correctional Office on Offenders with Medical or Mental Impairments;

(C) one representative designated by the Texas Juvenile Justice Department;

(D) one representative from a State Supported Living Center that provides forensic services designated by the Texas Department of Aging and Disability Services or its successor agency;

(E) one representative designated by the Texas Association of Counties;

(F) two representatives designated by the Texas Council of Community Centers, including one representative of an urban local service area and one representative of a rural local service area;

(G) two representatives designated by the County Judges and Commissioners Association of Texas, including one representative who is the presiding judge of a court with jurisdiction over mental health matters;

(H) one representative designated by the Sheriffs' Association of Texas;

(I) two representatives designated by the Texas Municipal League, including one representative who is a municipal law enforcement official;

(J) one representative designated by the Texas Conference of Urban Counties;

(K) two representatives designated by the Texas Hospital Association, including one representative who is a physician;

(L) one representative designated by the Texas Catalyst for Empowerment;

(M) one representative of Disability Rights Texas;

(N) one representative designated by the Texas District and County Attorneys Association; and

(O) four representatives designated by the DSHS Council for Advising and Planning for the Prevention and Treatment of Mental and Substance Use Disorders (CAP):

(i) including the chair of the council, one representative of the council's members who is a consumer of or advocate for mental health services, one representative of the council's members who is a consumer of or advocate for substance abuse treatment, and one representative of the council's members who is a family member of or advocate for persons with mental health and substance abuse disorders;

(ii) at least one of the designated individuals represents consumers involved with forensic services; and

(iii) with the dissolution of the CAP, responsibility for designating representatives transfers to the HHSC Behavioral Health Advisory Committee.

(2) The DSHS Forensic Director serves as a non-voting ex officio member of the JCAFS.

(3) Each member serves until a replacement is nominated by the designating organization and appointed by the Executive Commissioner.

(h) Quorum. A majority of the voting members of the JCAFS constitutes a quorum.

(i) Presiding officers.

(1) The JCAFS selects from among its members a presiding officer.

(2) Unless re-elected, the term of the presiding officer is one year. A member serves no more than two consecutive terms as presiding officer.

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

Filed with the Office of the Secretary of State on March 28, 2016.

TRD-201601436

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: May 8, 2016

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



# ADOPTED RULES

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

## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 7. PESTICIDES

##### SUBCHAPTER H. STRUCTURAL PEST CONTROL SERVICE

##### DIVISION 3. COMPLIANCE AND ENFORCEMENT

###### 4 TAC §7.155

The Texas Department of Agriculture (Department) adopts the repeal of Subchapter H, Division 3, §7.155, relating to incidental use for schools, without changes to the proposal made in the February 19, 2016, issue of the *Texas Register* (41 TexReg 1192). The repeal is to eliminate confusion as a result of the adoption of a duplicative section, Chapter 7, Subchapter H, Division 7, §7.205.

There were no comments received.

The repeal of §7.155 is adopted pursuant to Chapter 1951 of the Texas Occupations Code, which provides the Department with the authority to license and regulate structural pest control applicators.

The code affected by the adoption is the Texas Occupations Code, Chapter 1951.

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 28, 2016.

TRD-201601427

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Effective date: April 17, 2016

Proposal publication date: February 19, 2016

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



## TITLE 13. CULTURAL RESOURCES

### PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

#### CHAPTER 7. LOCAL RECORDS

## SUBCHAPTER D. RECORDS RETENTION SCHEDULES

### 13 TAC §7.125

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 13 TAC §7.125(a)(1) is not included in the print version of the Texas Register. The figure is available in the html version of the April 8, 2016, issue of the Texas Register online.)*

The Texas State Library and Archives Commission adopts amendments to 13 TAC §7.125 regarding local government retention schedule for Records Common to All Local Governments (Schedule GR) with changes to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8709). The amendment affects §7.125(a)(1) and is adopted pursuant to the Government Code §441.158(a). The amendment makes revisions necessary to keep the schedule up-to-date with current laws, administrative rules, and improve retention of public records.

Comments were received regarding the amendment during the comment period. These comments and the resulting changes are identified in this preamble.

Comment: An official from City of Fort Worth recommended that the new proposed records series GR1075-40 W-9 Form - Request for Taxpayer Identification Number (TIN) and Certification be removed and included in GR1025-26a Accounts Payable and Disbursement Records.

Response: Agency will not make the change as requested. W-9 Forms will remain a separate records series. The Code of Federal Regulation prescribes a specific retention period and the agency is not authorized to set retention different than what is prescribed by rule or law.

Comment: An official from a City of Fort Worth agreed with the proposed retention of LA + 10 years for GR1075-16a Construction Project Records. They recommended the addition of the retention note, "Review before disposal; some records may merit PERMANENT retention for historical reasons." They also requested the removal of the requirement to keep original records once a facility is transferred to another entity. Additionally, they recommended revision of retention note addressing infrastructure to not be permanent but tied to life of asset.

Response: Agency agrees with the recommendations. Retention note added and revised accordingly.

Comment: An official from Harris County recommended clarification on the retention note requiring government entities to keep original records once a facility is transferred to another en-

tity. They are in agreement with the retention period of LA + 10 years.

Response: Agency agrees with recommendation to clarify retention note. Retention note has been revised.

Comment: An official from Harris County recommended the revision of retention note addressing infrastructure to not be permanent but tied to life of asset.

Response: Agency agrees with recommendation and retention note removed.

Comment: An attorney from Lloyd Gosselink Rochelle & Townsend, P.C. articulated its support of the proposed changes in language to the schedule. They do recommend reducing the retention period of GR1075-16c from 5 years to AV. They state that the AV designation will most assist local governments with management of these voluminous construction documents that precede the signed and sealed versions.

Response: Agency will not reduce retention period of this record series. The AV designation does allow flexibility but may cause some entities to destroy records too soon. Some construction projects can be very long-term projects spanning many years. The agency has determined that 5 years is a minimum number of years for these type of records and will provide for consistency across local governments.

The amended section is adopted under Government Code §441.158 that grants authority to the Texas State Library and Archives Commission to provide records retention schedules to local governments and §441.160 that allows the commission to revise the schedules.

The amended section affects Government Code §441.158 and §441.160.

§7.125. *Records Retention Schedules.*

(a) The following records retention schedules, required to be adopted by rule under Government Code §441.158(a) are adopted.

(1) Local Schedule GR: Records Common to All Local Governments, Revised 5th Edition.  
Figure: 13 TAC §7.125(a)(1)

(2) Local Schedule PW: Records of Public Works and Other Government Services, 2nd Edition.  
Figure: 13 TAC §7.125(a)(2) (No change.)

(3) Local Schedule CC: Records of County Clerks, 3rd Edition.  
Figure: 13 TAC §7.125(a)(3) (No change.)

(4) Local Schedule DC: Records of District Clerks, 3rd Edition.  
Figure: 13 TAC §7.125(a)(4) (No change.)

(5) Local Schedule PS: Records of Public Safety Agencies, 3rd Edition.  
Figure: 13 TAC §7.125(a)(5) (No change.)

(6) Local Schedule SD: Records of Public School Districts, Revised 2nd Edition.  
Figure: 13 TAC §7.125(a)(6) (No change.)

(7) Local Schedule JC: Records of Public Junior Colleges, 2nd Edition.  
Figure: 13 TAC §7.125(a)(7) (No change.)

(8) Local Schedule LC: Records of Justice and Municipal Courts, 2nd Edition.

Figure: 13 TAC §7.125(a)(8) (No change.)

(9) Local Schedule TX: Records of Property Taxation, 3rd Edition.

Figure: 13 TAC §7.125(a)(9) (No change.)

(10) Local Schedule EL: Records of Elections and Voter Registration, 3rd Edition.

Figure: 13 TAC §7.125(a)(10) (No change.)

(11) Local Schedule HR: Records of Public Health Agencies, 2nd Edition.

Figure: 13 TAC §7.125(a)(11) (No change.)

(12) Local Schedule UT: Records of Utility Services, 2nd Edition.

Figure: 13 TAC §7.125(a)(12) (No change.)

(b) The retention periods in the records retention schedules adopted under subsection (a) of this section serve to amend and replace the retention periods in all editions of the county records manual published by the commission between 1978 and 1988. The retention periods in the manual, which were validated and continued in effect by Government Code §441.159, until amended, are now without effect.

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 28, 2016.

TRD-201601418

Sarah Jacobson

Government Information Analyst

Texas State Library and Archives Commission

Effective date: April 17, 2016

Proposal publication date: December 4, 2015

For further information, please call: (512) 463-5449

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**TITLE 16. ECONOMIC REGULATION**

**PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION**

**CHAPTER 33. LICENSING**

**SUBCHAPTER A. APPLICATION PROCEDURES**

**16 TAC §33.9**

The Texas Alcoholic Beverage Commission adopts amendments to §33.9, relating to Fees for On-Line Transaction, without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1059).

Section 33.9 sets the fees for on-line transactions with the commission. The amendments clarify that the fees for a credit card transaction are 25 cents, plus 2.75 percent of the total transaction amount. The amendments establish a flat fee of one dollar for a transaction paid by ACH or electronic check. The fees are consistent with those required by Texas.Gov, which processes the commission's on-line transactions.

Section 33.9 was also reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The com-

mission has determined that the need for the section continues to exist but that it should be amended.

No comments were received.

The amendments are adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and §5.55, which grants authority to charge reasonable service fees for the use of electronic or internet service to apply for licenses, permits or certificates.

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 28, 2016.

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Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

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Proposal publication date: February 12, 2016

For further information, please call: (512) 206-3489



## CHAPTER 41. AUDITING

### SUBCHAPTER C. RECORDS AND REPORTS BY LICENSEES AND PERMITTEES

#### 16 TAC §41.52

The Texas Alcoholic Beverage Commission adopts amendments to §41.52, relating to Private Clubs--In General, without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1060).

Section 41.52 sets forth general rules relating to private clubs. The amendments make grammatical changes, change outdated references, correct internal references, change gender-specific references to gender-neutral references, or change the word "administrator" to "executive director" (pursuant to Alcoholic Beverage Code §5.11(b) and commission practice).

The amendments provide that subsection (c)(1)(F) references to tax bond requirements apply to any bond that may otherwise be required, but remove an affirmative obligation in this section that a bond be maintained. This is consistent with the commission's treatment of tax bonds generally.

The amendments also eliminate the food service requirement in subsection (e) for "complete" meals. Clubs may fulfill the food service obligation by contracting with an outside vendor. The food has to be available upon request and be delivered to and served on the club's premises. In addition, payment for the food service has to be made by the member to the club, and not to the outside vendor.

Section 41.52 was reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for re-adoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

No comments were received.

The amendments are adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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

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Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3489



#### 16 TAC §41.54

The Texas Alcoholic Beverage Commission adopts the repeal of §41.54, relating to Destructions, without changes to the proposal as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1062).

Section 41.54 addresses the procedures to be followed by certain permittees and licensees who wish to obtain a tax exemption or tax credit for alcoholic beverages that are destroyed. The commission reviewed the section pursuant to Government Code §2001.039 and determined that the need for a rule continues to exist but that substantial revisions are necessary. Therefore, the commission repeals the text of this section and in a separate rulemaking replaces it with new text under the same rule number and title.

No comments were received.

The repeal is adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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

Filed with the Office of the Secretary of State on March 28, 2016.

TRD-201601423

Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

Effective date: April 17, 2016

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For further information, please call: (512) 206-3489



#### 16 TAC §41.54

The Texas Alcoholic Beverage Commission adopts new §41.54, relating to Destructions, without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1062).

Section 41.54 addresses the procedures to be followed by certain permittees and licensees who wish to obtain a tax exemption or tax credit for alcoholic beverages that are destroyed. In a separate rulemaking, the commission reviewed the previous

version of this section pursuant to Government Code §2001.039 and determined that the need for a rule continues to exist but that substantial revisions to that version of the rule were necessary. Therefore, in that separate rulemaking the commission has repealed the text of this section as it previously read and in this rulemaking the commission replaces it with new text under the same rule number and title.

Subsection (a) specifies which permittees and licensees are entitled to a tax exemption or tax credit for alcoholic beverages that are destroyed in accordance with the section.

Subsection (b) defines which destructions qualify for a tax exemption or tax credit.

Subsection (c) specifies the timeline to notify the commission prior to a destruction and that an Application for Destruction of Alcoholic Beverages must be used to provide the notice. It also requires that written approval be received before the destruction occurs.

Subsection (d) specifies the documents to be retained after a destruction, including a copy of the Application for Destruction of Alcoholic Beverages signed by an authorized representative of the commission, any receipt for fees charged by the facility where the destruction occurred, and an affidavit of destruction executed by an employee of the permittee or licensee who witnessed the destruction.

Subsection (e) provides that the approved Application for Destruction of Alcoholic Beverages must be submitted with the monthly excise tax report filed with the commission upon which the tax exemption is claimed. If a permittee or licensee is unable to claim the destruction as an exemption on a tax report, the subsection allows the permittee or licensee to submit a letter requesting issuance of an authorized tax credit.

Subsection (f) requires that the permittee or licensee retain a copy of the Application for Destruction of Alcoholic Beverages.

Subsection (g) specifies that the commission may require that the alcoholic beverages designated for destruction be physically inspected by the commission's authorized representative prior to destruction and/or that the actual destruction be witnessed by such a representative.

No comments were received.

The new section is adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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

Filed with the Office of the Secretary of State on March 28, 2016.

TRD-201601424

Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

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Proposal publication date: February 12, 2016

For further information, please call: (512) 206-3489



## TITLE 22. EXAMINING BOARDS

## PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

### CHAPTER 513. REGISTRATION

#### SUBCHAPTER B. REGISTRATION OF CPA FIRMS

##### 22 TAC §513.10

The Texas State Board of Public Accountancy adopts an amendment to §513.10, concerning Firm License, without changes to the proposed text as published in the January 29, 2016, issue of the *Texas Register* (41 TexReg 768). The section will not be republished.

The amendment to §513.10 clarifies that: 1) CPA firms may be organized under the Texas Business Corporation Act and LLC law, as well as the Texas Professional Corporation Act and professional LLC law, and 2) Professional organizations must be composed entirely of licensees.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on March 24, 2016.

TRD-201601404

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: April 13, 2016

Proposal publication date: January 29, 2016

For further information, please call: (512) 305-7842



##### 22 TAC §513.11

The Texas State Board of Public Accountancy adopts an amendment to §513.11, concerning Qualifications for Non-CPA Owners of Firm License Holders, without changes to the proposed text as published in the January 29, 2016, issue of the *Texas Register* (41 TexReg 769). The section will not be republished.

The amendment to §513.11 clarifies that: 1) CPA firms may be organized under the Texas Business Corporation Act and LLC law, as well as the Texas Professional Corporation Act and professional LLC law, and 2) Professional organizations must be composed entirely of licensees.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



## CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

### SUBCHAPTER C. ETHICS RULES: INDIVIDUALS AND SPONSORS

#### 22 TAC §523.131

The Texas State Board of Public Accountancy adopts an amendment to §523.131, concerning Board Approval of Ethics Course Content, without changes to the proposed text as published in the January 29, 2016, issue of the *Texas Register* (41 TexReg 770). The section will not be republished.

The amendment to §523.131 requires ethics course providers to have in their presentation and materials information on the services available to licensees from the Accountants Confidential Assistance Network (ACAN).

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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Proposal publication date: January 29, 2016

For further information, please call: (512) 305-7842



## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

## CHAPTER 59. PARKS

The Texas Parks and Wildlife Department Commission (Commission) in a duly noticed meeting on January 21, 2016 adopted the repeal of §§59.1 - 59.5, 59.41 - 59.47, 59.191 - 59.193, and 59.330, amendments to §§59.101 - 59.103, 59.105, 59.107 - 59.109, 59.133, and 59.134, and new §§59.1 - 59.5, 59.42, and 59.44, concerning State Parks, without changes to the proposed text as published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9075). Amendments to §59.131 are adopted with changes.

The current state park rules have accreted over time and in some places are confusing, disjointed, and contradictory. With the exception of the amendments to §§59.131, 59.133, and 59.134, concerning state parks rules of conduct, the repeals, amendments, and new sections are nonsubstantive and intended to modernize the department's state park rules by removing obsolete provisions, eliminating redundancy, consolidating provisions by subject material, and simplifying regulatory provisions where possible. The department wishes to stress that the rules do not impose additional fees or increase current fees at any park and are strictly nonsubstantive in that regard.

The repeal of §§59.1 - 59.5 is necessary in order to accommodate new rules that simply and succinctly establish the process by which the department establishes and changes the various fees it is authorized to impose.

New §59.1, concerning Establishment of Fees, retains the language of current §59.1(a) and adds a definition of "state park" or "park" in the interests of accuracy. Current §59.1(b) is eliminated because it is an abstraction that is of little use from a regulatory perspective. New paragraph (1) clearly delineates the process by which the department establishes the various state park fees. The Commission currently establishes entry, facility, and use fees within a range of values that the executive director may adjust as necessary but not exceed. New paragraph (2) formalizes that process by requiring all changes (including waivers and discounts) to entry, facility, and use fees to be documented by executive order. New paragraph (3) provides for the delegation of discount and waiver authority to other department personnel in accordance with a written department policy, and new paragraph (4) requires the establishment and collection of fees and fee waivers to be consistent with sound management of financial resources and strong fiscal controls. The new rule is intended to provide flexibility to the department to adjust fees by increments as necessary within the fee ranges established by the commission while simultaneously providing accountability by way of documentation.

Current §59.2, concerning Parks Entrance and Use Fees, has become confusing and contains unnecessary provisions. Therefore, new §59.2, concerning Park Entrance Fees, provides a single, concise set of provisions to establish the department's authority to impose entry fees, entry fee amount ranges, the privileges conveyed by payment of an entry fee, the duration of those privileges, and the department's authority to create customized fees that include entry fees. The extraneous provisions such as application procedures and privileges for various passes are now located in new §59.3, concerning Park Entry Passes. The department notes that neither the current entry fee privileges and period of validity nor the current entry fee amounts are being changed.

New §59.3, concerning Park Entry Passes, consolidates all provisions concerning the various passes issued by the department

(application, fees, privileges) in a single section. The department notes that the new provision does not introduce any substantive changes to the current rules governing the issuance of various passes and does not increase any fee.

New §59.4, concerning Activity and Facility Use Fees, reorganizes and simplifies the current fee schedule without altering the current fee ranges established by the Commission. The department has determined that the current fee rules for activity and facility use at §59.3, concerning Activity and Facility Use Fees, are redundant, excessively detailed, and minutely nuanced for no reason or benefit. For instance, the section establishes separate fee ranges for pavilions, amphitheaters, auditoriums, and gymnasiums, which are essentially the same thing. Similarly, the section establishes fee ranges for hotel/motel rooms based on bed size (single, standard, king single, suite, executive suite), but also for bed and breakfast facilities, rooms with kitchenettes, cabins, and shelters. The current rule makes various subtle distinctions regarding campsites (primitive, regular, regular with electricity, regular with electricity and sewer connection) and group facilities (group lodge, group camp, etc.) as well as numerous other permutations and combinations of facilities and usage. The department has determined that a simple fee schedule that establishes fee ranges for basic types of facilities and use is all that is necessary from a regulatory perspective, with the specific current fees for each type of facility/use to be established by executive order. Thus, rather than multiple fee ranges for essentially the same type of facility/use parameters, the new rule establishes facility/use ranges by generic type under the current fee ranges for those facilities/uses. The new rule also consolidates existing fees relating to commercial use of state parks that impact usage by the public, require additional staff, or impact facilities or resources into a single "park impact fee." The department notes that the new section does not alter the current fee ranges established by the commission.

New §59.5, concerning Reservation of State Park Facilities, provides for a parks reservation system. The department currently operates a reservation system; the new rule acknowledges that fact and provides for the executive director's authority to prescribe the procedures and conditions for operating that system.

The repeal of §§59.41 - 59.47 (current Subchapter C) is necessary to eliminate unnecessary regulations. The current regulations are advisory and informational in nature and therefore unnecessary in a regulatory format. The department has determined that with the exception of land acquisition and development guidelines (required by statute, Parks and Wildlife Code, §13.001), the subject material of Subchapter C is more properly the province of department policy.

New §59.42, concerning Land Acquisition Guidelines (including donations), sets forth the various parameters to be considered by the department with respect to the acquisition of lands for addition to the parks system. Of primary importance is consistency with the department's Land and Water Resources Conservation and Recreation Plan (Plan) required by Parks and Wildlife Code, §11.104. The Plan is a master document that prioritizes and guides department decisions for the long term. Therefore, new subsection (a)(1) recognizes the role of the Plan in department acquisition decisions. New subsection (a)(2) establishes contiguity with existing lands as a priority. The department has determined that the ability to increase or enhance existing parkland is a recognized value-added factor in department acquisition decisions. New subsection (a)(3) recognizes the importance of various recreational values to be considered when the department

contemplates the acquisition of land, such as water features, and interesting or unique topographic features that provide aesthetic appeal to the park-going public. A further consideration, set forth in new subsection (a)(4), is the natural resource value of prospective acquisitions. In addition to enjoyment by the public, another function of parkland is the preservation of habitats and ecosystems, which is intrinsically valuable. New subsection (a)(5) implicates the cultural value of prospective land acquisitions, recognizing that the parks experience also touches on the rich cultural and historical resources of Texas, which are worthy of preservation and interpretation for the benefit and enrichment of the public. New subsection (a)(6) recognizes the priority of a prospective acquisition that would fill a gap in the department's inventory of natural and cultural resources. Given the size of Texas, its geographic and cultural diversity, and the finite resources available for land acquisition, it is important that the department seek to acquire land that addresses unique natural and cultural facets of the state that may not be currently represented in the inventory of department lands. New subsection (a)(7) acknowledges the ancillary values of viewsheds, wildlife corridors, watersheds, and buffers for existing parklands. New subsection (a)(8) sets forth priorities based on the size of a prospective acquisition. Generally, it is desirable for smaller acquisitions (less than 500 acres) to be contiguous with existing parkland, unless there is a compelling cultural or natural feature that makes it imperative to acquire a parcel; otherwise, larger parcels that are not contiguous may be acquired so long as the acquisition is consistent with the Plan. Finally, new subsection (a)(9) acknowledges the value of miscellaneous criteria in the department's decision-making with respect to land acquisition for parks.

New §59.42(b) requires all additions to the state park system to be formally accepted by vote of the Commission, which is necessary to ensure that all parkland acquisition is transparent and subject to public comment.

New §59.44, concerning Development Guidelines, stipulates that facilities development within the state park system be limited to structures and infrastructure that advance the purposes of the department or serve visitor needs and are consistent with department planning documents. The department believes it is prudent to acknowledge that structures and infrastructure within state parks serve a purpose and not be gratuitous or unnecessary.

The amendments to §§59.101 - 59.103, 59.105, and 59.107 - 59.109 make nonsubstantive changes to the rules in Subchapter E, concerning Operation and Leasing of Park Concessions. The amendments modernize the rules and eliminate unnecessary provisions.

The amendment to §59.101, concerning Definitions, adds the word "leased" to the definition of "concessioner" in paragraph (1), adds "facility use" to the exceptions in paragraph (2), replaces the word "state" with the word "department" in paragraph (3), adds new paragraph (5) to define "state park or park," and eliminates the definitions for "prospectus," "state-operated concessions," and "partnership concessions." The amendment to paragraph (1) is necessary to clarify that concession rights on state parks are leased (i.e., subject to the time limits established in a contract) and not permanent. The amendment to paragraph (2) is necessary to clarify the definition of "concessions." The amendment to paragraph (3) is necessary to clarify that the payment is actually made to the department. The definition of "state park or park" in new paragraph (5) is necessary to establish the context of the applicability of the rules. The definitions in current

paragraphs (5) - (7) are superfluous and thus are eliminated. The definition of "prospectus" in current paragraph (5) is unnecessary because the term is archaic and is being eliminated throughout the rules. The definitions in current paragraphs (6) and (7) are being eliminated because the department is not required to treat itself as a concessioner, which leaves all other concessions by default as undertakings of entities other than the department, and covered by the definition in paragraph (1).

The amendment to §59.102, concerning General Requirements for Leased Park Concessions, alters subsection (a) by adding a declarative statement that park visitor services and accommodations may be operated by a concessioner under contractual arrangements with the department. The department has determined that a direct statement to the effect that the department may contract for the provision of services and accommodations via contract with a concessioner is the most effective way to express the relationship between the department and concessioners. The amendment to subsection (a) also removes the provision stating that when adequate services and accommodations exist outside a park within a reasonable distance, every attempt will be made to avoid the duplication of same products and services. The provision is unnecessary because such determinations are part of the criteria used by the department to determine the feasibility of providing the opportunity of any given concession. The amendment also eliminates current subsection (c), which consists of a list of types of concessions that the department may authorize. The provision is unnecessary because the provision is unintentionally limiting. The department has the authority to contract to provide any concession the department deems necessary to enhance or improve the visitation experience, provided it is consistent with the department's mission and the Plan. See, Parks and Wildlife Code, §13.015.

The amendment to §59.103, concerning Selection of a Concessioner, reorganizes and simplifies the section for clarity. The amendment to subsection (a) incorporates the text from current subsection (c), which delegates the granting, termination, amendment, transfer, assignment, and enforcement of all leased concession contract requirements and provisions of such contracts to the executive director. The amendment to subsection (a) also eliminates a statement to the effect that when necessary, desirable, and financially feasible, the department may announce availability of concession opportunity by means of a prospectus. The department has determined that a declarative statement of the authority delegated to the executive director by the Commission with respect to contracts with concessioners is the most effective method of establishing the process for determining the need for and the granting of concession contracts. Similarly, the amendment to §59.103 adds new subsection (b) to provide that the recruitment and selection of concessioners for a leased concession within a state park be undertaken in a manner appropriate for the scale of the investment and term of the business opportunity, ensuring that the selection process is fair and equitable, and in compliance with applicable contracting laws. The department believes that a statement of intent establishing the general criteria used by the department to determine appropriate concessioners and concession opportunity is important, as is a statement of intent to follow all applicable contracting laws.

The amendment to §59.103 also amends current subsection (b) (which is being re-designated as subsection (c)) to modernize archaic language and replace a wordy and abstruse provision regarding the expectations of the department with regard to the operations of a concession with a simpler provision stating that it

is the expectation of the department that a concessioner operate a concession as set forth in the contract. The amendment also eliminates current subsections (c) and (d), which are no longer necessary. The substantive provisions of current subsection (c) have been incorporated in subsection (a). Current subsection (d) is unnecessary because the authority to terminate on the basis of breach of contract exists as a condition of the contract and does not need to be established by rule.

The amendment to §59.105, concerning Leased Concession Contract Terms, makes nonsubstantive changes and eliminates archaic language. The amendment to subsection (a) removes stilted language. The amendment to subsection (b) stipulates that franchise fee rates be determined by the executive director or his designee in an equitable and fair manner, giving consideration to the various types of operations, gross receipts, net profit, and capital invested and provides that single or multiple percentages applied to all or various kinds of gross receipts may be considered in new or amended contracts. Essentially, the amendment establishes the criteria used by the department to determine the particulars of franchise fee rates. The amendment also eliminates a provision in current subsection (b) that limits revocable short-term contracts to a term of two years or less. The department sees no reason for such a limitation.

The amendment to §59.105(c) provides for penalties and interest for delinquent franchise fees to be stated in a contract, not to exceed the amounts allowed by statute, which is in keeping with current business practices.

The amendment to §59.105 adds new subsection (d) to provide that penalties and interest may be waived by the executive director or designee for good cause. This provision recognizes that there could be situations in which it would be appropriate for the department to waive penalties and interest imposed under a concession contract, due to such things as unforeseen factors beyond the control of a concessioner, or when in the best interest of the department. The department wishes to provide for such situations.

The amendment to §59.105 also adds new subsection (e) to provide that the rates and charges prescribed by the concessioner shall be subject to the approval of the executive director or designee, that the reasonableness of the concessioner's rates and charges to the public shall be judged primarily by comparing with current charges for facilities and services of comparable character under similar conditions, and that consideration shall be given to factors deemed relevant to the type of concession, location, and business conditions. The new subsection is necessary to ensure that park visitors are able to use reasonably priced concession opportunities and to protect the state from fraud and loss.

The amendment to §59.107, concerning Accounting, makes a nonsubstantive grammatical change in subsection (a).

The amendment to §59.108, concerning Bond and Insurance, alters subsection (a) by widening the scope of the requirement for a bond to be furnished by a concessioner, and allows the department to impose other conditions as necessary to protect the interests of the department and the public, and ensure compliance with applicable law regarding payment and performance bonds. The current rule limits bond requirements to construction projects. The department sees no reason why bond requirements should be thus limited and reasons that the public's interest should be protected in all cases. Therefore, the department should be able to require any action, including the furnishing of

a bond, when it determines there is a necessity to do so. The amendment also eliminates archaic language in subsection (b) related to insurance coverage and replaces it with a simple directive to carry such liability insurance as deemed appropriate by the department.

The amendment to §59.109, concerning Furnishing Utilities, allows the cost of utilities used by a concessioner to be addressed in the terms of the contract in instances where it is not feasible to meter such usage. Currently, the rule requires utility payments under such conditions to be paid upon receipt of notification. The department has determined that it is in the best interest of the public, the department, and the concessioner to have such issues be addressed contractually so that all parties are in agreement prior to the initiation of concession activities.

The amendment to §59.131, concerning Definitions, replaces a missing conjunction in paragraph (20).

The amendment to §59.133, concerning Closing Hours and Overnight Use, adds new subsection (b) to provide that the executive director or designee may close a state park as necessary to protect public health and safety during emergency conditions, resource management activities, construction projects, or other management purposes. This provision recognizes that it is appropriate to close a park as necessary and to set forth that capability by rule.

The amendment to §59.134, concerning Rules of Conduct in Parks, allows llamas in state parks, prohibits the introduction of any species of animal life into a state park except as authorized, allows persons to display and use archery equipment when participating in authorized angling activity, and clarifies that activities allowed by permit must be conducted under the same conditions as those conducted by payment of fee.

Current §59.134(c) allows for the entry and use of equines by park visitors in designated areas. The amendment adds llamas. The department has been approached by llama enthusiasts who would like to be able to use llamas as pack and assistance animals. After consulting with the Texas Animal Health Commission, the department sees no reason not to allow llamas under the same provisions that currently apply to equines.

Current §59.134(c)(3)(B) creates an offense for the introduction of any species of animal life within a state park. The department has recently encountered situations in which park visitors intentionally and unintentionally introduced exotic wildlife to state parks. The introduction of such animal species presents a threat to native ecosystems and habitats. In order to protect and better manage the lands held by the department for the enjoyment of the public, the department believes it is prudent to expressly prohibit the introduction of any species of animal life except as may be specifically authorized by the Parks and Wildlife Code or the executive director.

Current §59.134(d) creates an offense for the display or discharge of arms in a state park except in certain listed situations. The definition of "arm and firearm" in §59.131(1) includes archery equipment. Although the current rules of conduct in state parks allow the display and use of arms and firearms when being used in authorized public hunting activities, the rules do not address the use of archery equipment for the take of nongame fish during authorized angling activities. The amendment remedies that oversight. Subsection (d) also updates this provision to address situations in which a person is carrying a handgun in compliance with applicable handgun laws.

The amendment to §59.134(f) adds language to clarify that it applies to activities conducted under permit as well as to activities conducted following the payment of a fee.

The repeal of §§59.191 - 59.193, concerning Relocation Assistance in Park Acquisition Projects, is necessary because the rules no longer serve a purpose. The repeals constitute a repeal of Subchapter G.

The repeal of §59.330, concerning Eligibility of Donated Land for Acceptance and Inclusion in State Park System, is necessary because the provisions of that section have been incorporated in new §59.142. The repeals constitute a repeal of Subchapter K.

The department received two comments opposing adoption of the proposed rules. Both commenters articulated a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that fees should not be increased. The department agrees with the comment and responds that the rules as adopted neither impose new nor increase existing fees. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the lake use fee is ridiculous. The department disagrees with the comment and responds that the fee in question is already in effect and is not altered by the new rules.

No groups or associations commented on the adoption of the rules as proposed.

The department received eight comments supporting adoption of the rules as proposed.

## SUBCHAPTER A. PARK ENTRANCE AND PARK USER FEES

### 31 TAC §§59.1 - 59.5

The repeals are adopted under Parks and Wildlife Code, §11.027(e), which authorizes the commission to establish by rule for the collection of a fee for entering, reserving, or using a facility or property owned or managed by the department; §13.015(a), which authorizes the commission to set park user fees for park services; §13.018(e), which requires the commission to establish by rule the eligibility requirements and privileges available to the holder of a state parklands passport; and §13.0191, which authorizes the department to set fees for the use of a facility or lodging at a state park in an amount to recover the direct and indirect costs of providing the facility or lodging and provide a reasonable rate of return to the department.

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

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Ann Bright

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775

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**31 TAC §§59.1 - 59.5**

The new rules are adopted under Parks and Wildlife Code, §11.027(e), which authorizes the commission to establish by rule for the collection of a fee for entering, reserving, or using a facility or property owned or managed by the department; §13.015(a), which authorizes the commission to set park user fees for park services; §3.018(e), which requires the commission to establish by rule the eligibility requirements and privileges available to the holder of a state parklands passport; and §13.0191, which authorizes the department to set fees for the use of a facility or lodging at a state park in an amount to recover the direct and indirect costs of providing the facility or lodging and provide a reasonable rate of return to the department.

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**SUBCHAPTER C. ACQUISITION AND DEVELOPMENT OF HISTORIC SITES, BUILDINGS AND STRUCTURES**

**31 TAC §§59.41 - 59.47**

The repeals are adopted under Parks and Wildlife Code, §13.001(c), which requires the commission to adopt rules governing the acquisition and development of recreational areas, natural areas, or historical sites; §13.011(b), which authorizes the commission to adopt reasonable rules for accepting or purchasing sites, for determining the suitability of sites, and for establishing the priority of accepting and marking the sites; and §13.0075, which requires the commission to adopt criteria for determining the eligibility of real property that is donated to the department for inclusion in the state parks system.

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

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**31 TAC §§59.42, §59.44**

The new rules are adopted under Parks and Wildlife Code, §13.001(c), which requires the commission to adopt rules governing the acquisition and development of recreational areas, natural areas, or historical sites; §13.011(b), which authorizes the commission to adopt reasonable rules for accepting or purchasing sites, for determining the suitability of sites, and for establishing the priority of accepting and marking the sites; and §13.0075, which requires the commission to adopt criteria for determining the eligibility of real property that is donated to the department for inclusion in the state parks system.

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**SUBCHAPTER E. OPERATION AND LEASING OF PARK CONCESSIONS**

**31 TAC §§59.101 - 59.103, 59.105, 59.107 - 59.109**

The amendments are adopted under Parks and Wildlife Code, §13.015(b), which authorizes the department to operate or grant contracts to operate concessions in state parks or on causeways, beach drives, or other improvements in connection with state park sites and to make regulations governing the granting or operating of concessions.

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

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**SUBCHAPTER F. STATE PARK OPERATIONAL RULES**

**31 TAC §§59.131, 59.133, 59.134**

The amendments are adopted under Parks and Wildlife Code, §13.101, which authorizes the commission to promulgate regulations governing the health, safety, and protection of persons and property in state parks, historic sites, scientific areas, or forts under the control of the department, including public water within state parks, historic sites, scientific areas, and forts; and §13.102, which authorizes the department to make regulations

governing the conservation, preservation, and use of state property whether natural features or constructed facilities; the abusive, disruptive, or destructive conduct of persons; the activities of park users including camping, swimming, boating, fishing, or other recreational activities; the possession of pets or animals; the regulation of traffic and parking; and conduct which endangers the health or safety of park users or their property.

§59.131. *Definitions.*

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

(1) Arms and firearms--Any device from which shot, a projectile, arrow, or bolt is fired by the force of an explosion, compressed air, gas, or mechanical device. To include, but not limited to, rifle, shotgun, handgun, air rifle, pellet gun, longbow, cross bow, sling shot, blow gun, or dart gun.

(2) Bicycle--A device that a person may ride, that is propelled by human power, and has two tandem wheels at least one of which is more than 14 inches in diameter.

(3) Artifacts--Objects used or modified by humans, including, but not limited to, arrow points, dart points, stone, bone, or shell implements or any other prehistoric or historic objects.

(4) Boat--A vessel not more than 65 feet in length, measured from end to end over the deck, excluding sheer, and manufactured or used primarily for noncommercial use.

(5) Camping--The act of:

(A) occupying a designated camping facility;

(B) erecting a tent, or arranging bedding, or both, for the purpose of, or in such a manner as will permit, remaining overnight; and/or

(C) using a trailer, camper, or other vehicle for the purpose of sleeping during nighttime hours.

(6) Cultural features--Include, but are not limited to, state archeological landmarks, archeological sites, historic sites and structures, pictographs and petroglyphs.

(7) Department--The Texas Parks and Wildlife Department.

(8) Director--The executive director of the Texas Parks and Wildlife Department or his or her designee.

(9) Equine--A species of animal belonging to the family equidae, including horses, ponies, donkeys, and mules.

(10) Garbage--Trash, refuse, rubbish, household waste, medical waste, rubble, spoil, construction debris, yard clippings, offal, or any other similarly useless, noxious, or offensive material.

(11) Motor Vehicle--For purposes of this subchapter, a motor vehicle does not include a wheelchair, a motorized wheelchair or a motorized mobility device. A motor vehicle is a motor powered vehicle, including, but not limited to:

(A) any motor driven or propelled vehicle required to be registered under the laws of this state;

(B) an all-terrain vehicle as defined in Transportation Code, §502.001;

(C) a motorcycle as defined in Transportation Code, §501.002 and §541.201;

(D) a golf cart, as defined in Transportation Code, §502.001;

(E) a moped as defined in Transportation Code, §541.201;

(F) a neighborhood electric vehicle as defined in Transportation Code, §551.301;

(G) a pocket bike or mini-motorbike, as defined in Transportation Code, §551.301;

(H) an electric bicycle; or

(I) a motor assisted scooter, as defined in Transportation Code, §551.301.

(12) Motorized mobility device--A device designed for transportation of persons with physical disabilities that:

(A) has three or more wheels;

(B) is propelled by a battery-powered motor;

(C) has not more than one forward gear; and

(D) is not capable of speeds exceeding eight miles per hour.

(13) Night--Any time from 1/2 hour after sunset to 1/2 hour before sunrise.

(14) Person--Natural persons, firms, partnerships, corporations, clubs, and all associations or combinations of persons acting individually, or by an agent, servant, or employee.

(15) Pet--A domesticated companion animal accompanying a person who enters or uses a state park. In no event shall a pet under this subchapter include the following:

(A) a dangerous wild animal, as defined in Health and Safety Code, §822.101;

(B) wildlife;

(C) livestock and exotic livestock as defined in Agriculture Code, §§1.003, 142.001, and 161.001;

(D) any species of animal that is not ordinarily domesticated; or

(E) any species of animal that a person may not legally possess.

(16) Plant life--All plants including trees, dead or downed wood, shrubs, vines, wildflowers, grass, sedge, fern, moss, lichen, fungus, or any other member of the plant family.

(17) Public place--Any place to which the public or a substantial group of the public has access. The interior spaces of the following are not considered public places:

(A) department cabins, screened shelters, recreation halls, group barracks, and lodges; and

(B) tents, campers, trailers, motor homes, or any enclosed vehicle(s) that are used as camping equipment.

(18) State park--A state park, state historic site, or state natural that is administered, operated, or managed by the department.

(19) Unattended pet--A pet that is unaccompanied or not under immediate control of the person responsible for the pet. Pets tied or secured outside of camping equipment or buildings are not considered under immediate control.

(20) Wildlife--A species, including each individual of a species, that normally lives in a state of nature and is not ordinarily domesticated.

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

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## SUBCHAPTER G. RELOCATION ASSISTANCE IN PARK ACQUISITION PROJECTS

### 31 TAC §§59.191 - 59.193

The repeals are adopted under Parks and Wildlife Code, §13.001(c), which requires the commission to adopt rules governing the acquisition and development of recreational areas, natural areas, or historical sites; §13.011(b), which authorizes the commission to adopt reasonable rules for accepting or purchasing sites, for determining the suitability of sites, and for establishing the priority of accepting and marking the sites; and §13.0075, which requires the commission to adopt criteria for determining the eligibility of real property that is donated to the department for inclusion in the state parks system.

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

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## SUBCHAPTER K. ACCEPTANCE OF DONATED LAND

### 31 TAC §59.330

The repeal is adopted under Parks and Wildlife Code, §13.0075, which requires the commission to adopt criteria for determining the eligibility of real property that is donated to the department for inclusion in the state parks system.

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

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## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 1. CENTRAL ADMINISTRATION

##### SUBCHAPTER A. PRACTICE AND PROCEDURES

##### DIVISION 2. LEGAL SERVICES BOND DIVISION

#### 34 TAC §§1.51, 1.52, 1.54 - 1.56, 1.58 - 1.60

The Comptroller of Public Accounts adopts the repeal of §1.51, concerning presentation of municipal bonds and other public securities for registration before issuance; §1.52, concerning certificates provided; §1.54, concerning registration numbers; §1.55, concerning release of bonds after registration; §1.56, concerning maintenance of transcript of proceedings for each bond issue; §1.58, concerning registration of bond ownership; §1.59; concerning conversion of form of a bond from bearer bond to registered bond and from registered bond to bearer bond and presentation for exchange; and §1.60, concerning form of registration certificates to be printed on bonds, without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1082). These sections are being repealed due to a change from paper to electronic registration that has occurred over time in public security registration practices under Government Code, Chapter 1203.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Government Code, §1203.026, which provides the comptroller with the authority to adopt rules relating to the comptroller's performance of registration of public securities under Chapter 1203.

The repeals do not affect Government Code, Chapter 1203, Subchapters A, B, and C, §1203.001 et. seq.

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. TAX ADMINISTRATION  
SUBCHAPTER S. MOTOR FUEL TAX

**34 TAC §3.432**

The Comptroller of Public Accounts adopts amendments to §3.432, concerning refunds on gasoline, diesel fuel, compressed natural gas, and liquefied natural gas taxes, without changes to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 946). The amendments are adopted to implement the provisions of Senate Bill 254, 81st Legislature, 2009, effective July 1, 2009, House Bill 2148, 83rd Legislature, 2013, effective September 1, 2013, and House Bill 1905, 84th Legislature, 2015, effective September 1, 2015.

Subsection (h)(1)(E) is amended to add the definition of a volunteer fire department to provide clarity for refund purposes because of statutory exemptions provided in Senate Bill 254 and House Bill 2148.

Subparagraph (F) is added to include an exemption for non-profit entities providing emergency medical services as provided in House Bill 1905.

Paragraph (2) is amended to reflect the inclusion of new subparagraph (F).

Paragraph (3) is reformatted to reflect the expansion of an exemption to include a Texas municipality and a transit company, including a metropolitan rapid transit authority, as provided in House Bill 1905.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

This amendment implements Tax Code, §162.104 (Exemption for Gasoline), §162.125 (Gasoline Refund or Credit for Certain Taxes Paid), §162.204 (Diesel Fuel Exemptions), §162.227 (Diesel Fuel Refund for Certain Taxes Paid), §162.356 (Compressed Natural Gas and Liquefied Natural Gas Exemptions), and §162.365 (Compressed Natural Gas and Liquefied Natural Gas Exemption).

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 22, 2016.

TRD-201601357

Don Neal

Chief Deputy General Counsel

Comptroller of Public Accounts

Effective date: April 11, 2016

Proposal publication date: February 5, 2016

For further information, please call: (512) 475-0387

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**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES**

**CHAPTER 9. INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES**

**SUBCHAPTER E. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS (ICF/IID) PROGRAM--CONTRACTING**

**DIVISION 3. PROVIDER ADMINISTRATIVE REQUIREMENTS**

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), the repeal of §9.218 and new §9.218 in Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities. New §9.218 is adopted with changes to the proposed text published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 451). The repeal of §9.218 is adopted without changes to the proposed text.

The adoption sets forth the requirements that a program provider in the Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Condition (ICF/IID) program must comply with to voluntarily close a facility and, at the program provider's option, to request suspension of a closing facility's certified capacity for up to one year after the facility closes. For DADS to approve the suspension of certified capacity, the closing facility must meet certain requirements, including having a certified capacity of eight or less. To activate the suspended capacity, the program provider must submit an application for enrollment in the ICF/IID Program before the suspension period ends.

A minor editorial change was made to §9.218(b)(2) to change passive voice to active voice.

DADS received no comments regarding adoption of the repeal and new section.

**40 TAC §9.218**

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

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

Filed with the Office of the Secretary of State on March 28, 2016.

TRD-201601431

Lawrence Hornsby  
General Counsel

Department of Aging and Disability Services

Effective date: April 17, 2016

Proposal publication date: January 8, 2016

For further information, please call: (512) 438-2264



#### 40 TAC §9.218

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

*§9.218. Voluntary Facility Closure and Suspension of Certified Capacity.*

(a) In this section, the terms "close" and "closure" refer to a facility ceasing to operate. The terms do not include temporarily relocating individuals who reside in a facility.

(b) Except as provided in subsection (c) of this section, if a program provider intends to voluntarily close a facility, the program provider must submit to DADS, at least 60 days before the facility closes, written notice of the program provider's intent to close the facility, which includes:

(1) the anticipated date of closure; and

(2) a description of how the facility will discharge and relocate an individual who resides in the closing facility to a new residence.

(c) If, for reasons beyond the program provider's control, the program provider cannot provide the notice required by subsection (b) of this section at least 60 days before the program provider anticipates closing the facility, the program provider must state in the notice the reason why a shorter time period is necessary.

(d) The program provider must comply with §9.227 of this subchapter (relating to Discharge from a Facility).

(e) If a facility is closing, DADS imposes a vendor hold on payments due to the program provider under the provider agreement until an audit conducted in accordance with §9.269 of this subchapter (relating to Audits) is complete.

(f) A program provider that closes a facility may request that DADS suspend some or all of the facility's certified capacity for up to one year after the facility closes.

(g) To request that a facility's certified capacity be suspended:

(1) the facility's certified capacity must be eight or less;

(2) the facility must not be the subject of any proposed or pending enforcement action; and

(3) the program provider must:

(A) voluntarily close the facility; and

(B) submit a letter to DADS requesting suspension of the facility's certified capacity.

(h) A letter submitted in accordance with subsection (g)(3)(B) of this section must include:

(1) the legal name and address of the program provider;

(2) the closing facility's name and address;

(3) the facility's identification number;

(4) the facility's contract number;

(5) the facility's license number and expiration date, if the facility is licensed;

(6) the certified capacity of the facility;

(7) the certified capacity for which the program provider is requesting the suspension;

(8) the anticipated closure date of the facility;

(9) justification for the suspension of certified capacity; and

(10) a statement regarding the possible use of the certified capacity in the future.

(i) Within 30 days after DADS receives a program provider's letter, as described in subsection (g)(3)(B) of this section, DADS notifies the program provider in writing whether DADS has approved or denied the program provider's request to suspend capacity.

(j) If DADS approves a request to suspend capacity, the notification from DADS states:

(1) the period of time the capacity is suspended, which must not exceed one year;

(2) the effective date of the suspension;

(3) the certified capacity being suspended; and

(4) the capacity available, which must not exceed six per facility.

(k) After DADS approves a request to suspend capacity, DADS does not extend the period of time for which capacity is suspended.

(l) A program provider may not transfer a facility's suspended capacity to another entity.

(m) DADS may rescind its approval of a request to suspend certified capacity. If DADS rescinds its approval, the suspended capacity reverts to the control of DADS.

(n) A program provider does not receive an administrative hearing to challenge DADS denial of a request to suspend capacity or DADS rescission of its approval to suspend capacity.

(o) To activate a facility's suspended certified capacity, the program provider must submit an application for enrollment in the ICF/IID Program in accordance with Division 2 of this subchapter (relating to Provider Enrollment) before the suspension period ends. If a program provider does not submit an application for enrollment in the ICF/IID

Program before the suspension period ends, the suspended capacity is not available to the program provider and reverts to the control of DADS. If DADS rejects a program provider's application for enrollment in the ICF/IID Program, the suspended capacity is not available to the program provider and reverts to the control of DADS.

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 28, 2016.

TRD-201601432

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: April 17, 2016

Proposal publication date: January 8, 2016

For further information, please call: (512) 438-2264



## CHAPTER 90. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS

### SUBCHAPTER H. ENFORCEMENT

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), the repeal of §90.239 and new §90.239, in Chapter 90, Intermediate Care Facilities for persons with an Intellectual Disability or Related Conditions, without changes to the proposed text as published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 470).

The adoption sets forth the notification requirements that an intermediate care facility for individuals with an intellectual disability or related condition (ICF/IID) license holder must comply with to voluntarily close a facility.

DADS received no comments regarding adoption of the repeal and new section.

#### **40 TAC §90.239**

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Health and Safety Code, Chapter 252, which

authorizes DADS to license an ICF/IID; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

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 28, 2016.

TRD-201601433

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: April 17, 2016

Proposal publication date: January 8, 2016

For further information, please call: (512) 438-2264



#### **40 TAC §90.239**

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Health and Safety Code, Chapter 252, which authorizes DADS to license an ICF/IID; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

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 28, 2016.

TRD-201601434

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: April 17, 2016

Proposal publication date: January 8, 2016

For further information, please call: (512) 438-2264



# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Texas Alcoholic Beverage Commission

### Title 16, Part 3

The Texas Alcoholic Beverage Commission (Commission) proposes to review 16 Texas Administrative Code §41.20, Timely Filing of Reports, in accordance with Texas Government Code §2001.039. An assessment will be made by the Commission as to whether the reasons for adopting the rule continue to exist. The review will examine whether the rule is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the Commission's public website at [http://www.tabc.texas.gov/laws/proposed\\_rules.asp](http://www.tabc.texas.gov/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the Commission will hold a public hearing to receive oral comments on the review on Thursday, April 28, 2016, at 1:30 p.m. in the commission meeting room at the Commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

TRD-201601382

Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

Filed: March 23, 2016



The Texas Alcoholic Beverage Commission proposes to review 16 Texas Administrative Code §45.101, Rebates, Coupons and Premium Stamps, in accordance with Texas Government Code §2001.039. An assessment will be made by the Commission as to whether the reasons for adopting the rule continue to exist. The review will examine whether the rule is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.texas.gov/laws/proposed\\_rules.asp](http://www.tabc.texas.gov/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the review on Thursday, April 28, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

TRD-201601383

Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

Filed: March 23, 2016



## Adopted Rule Reviews

Texas Facilities Commission

### Title 1, Part 5

Pursuant to the notice of the proposed rule review published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8915), the Texas Facilities Commission (the "Commission") has reviewed and considered for readoption, revision, or repeal Texas Administrative Code, Title 1, Part 5, Chapter 111, Administration, in accordance with Texas Government Code, §2001.039.

The Commission received no public comments concerning the review of Chapter 111. The Commission has completed its review and has determined that the reasons for originally adopting Chapter 111 continue to exist. In addition, the Commission reviewed the rules to determine whether the rules are obsolete, reflect current legal and policy considerations, reflect current procedures and practices of the Commission, and are in compliance with the Texas Administrative Procedure Act, Texas Government Code Chapter 2001. The Commission has determined that Chapter 111 requires amendment and a new rule that is required due to the passage of Senate Bill 20 by the 84th Legislature.

The Commission has determined to readopt the rules in Chapter 116 with amendments pursuant to Texas Government Code §2001.039. A concurrent notice of proposed rule amendment related to Chapter 111 will be published in the *Texas Register* for public comment.

This completes the Commission's review of Texas Administrative Code, Title 1, Part 5, Chapter 111, Administration.

TRD-201601455

Kay Molina

General Counsel

Texas Facilities Commission

Filed: March 29, 2016



Pursuant to the notice of the proposed rule review published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8915), the Texas Facilities Commission (the "Commission") has reviewed and considered for readoption, revision, or repeal Texas Administrative Code, Title 1, Part 5, Chapter 126, Surplus and Salvage Property Programs, in accordance with Texas Government Code, §2001.039.

The Commission received no public comments concerning the review of Chapter 126. The Commission has completed its review and has determined that the reasons for originally adopting Chapter 126 continue to exist. In addition, the Commission reviewed the rules to determine whether the rules are obsolete, reflect current legal and policy considerations, reflect current procedures and practices of the Commission, and are in compliance with the Texas Administrative Procedure Act, Texas Government Code Chapter 2001. The Commission determined that Texas Administrative Code, Title 1, §§126.1, 126.2, 126.3, 126.4, and 126.5 are still necessary as these rules were promulgated to direct the transfer, sale, auction, or other disposition of State of Texas surplus and salvage property either by the state agency that owns the subject property or by the Commission, on behalf of the State of Texas under Texas Government Code, Chapter 2175. Revisions to §§126.1, 126.4, and 126.5, however, are required to ensure consistency with governing statutes and to correct typographical errors.

Accordingly, the Commission has determined to readopt the rules in Chapter 126 with amendments pursuant to Texas Government Code §2001.039 and Texas Government Code §2165.0012 and §2165.058 (West 2008 & Supp. 2015). A concurrent notice of proposed rule amendment related to Chapter 126 will be published in the *Texas Register* for public comment.

This completes the Commission's review of Texas Administrative Code, Title 1, Part 5, Chapter 126, Surplus and Salvage Property Programs.

TRD-201601456

Kay Molina

General Counsel

Texas Facilities Commission

Filed: March 29, 2016



Texas Department of Public Safety

### **Title 37, Part 1**

Pursuant to the notice of proposed rule review published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9371) and the notice of proposed rule review published in the March 15, 2013, issue of the *Texas Register* (38 TexReg 1881), the Texas Department of Public Safety has reviewed and considered for readoption, revision or repeal all sections of the following chapters of Title 37, Part 1 of the Texas Administrative Code, in accordance with Texas Government Code, §2001.039: Chapter 1 (Organization and Administration); Chapter 5 (Criminal Law Enforcement); Chapter 17 (Administrative License Revocation); Chapter 19 (Breath Alcohol Testing Regulations); Chapter 21 (Equipment and Vehicle Safety Standards); Chapter 27 (Crime Records); Chapter 29 (Practice and Procedure); and Chapter 36 (Metals Recycling Entities). The department received no written comments regarding the review of its rules.

The department has completed its required review and determined that the original reasons for adoption of these chapters continue to exist. As a result of the rule review, the department did identify and publish proposed changes in other issues of the *Texas Register* in accordance with the Administrative Procedure Act (the Act). Any future revisions will also be published in the *Texas Register* in accordance with the Act.

This concludes the department's review of 37 TAC Chapters 1, 5, 17, 19, 21, 27, 29, and 36.

TRD-201601476

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Filed: March 30, 2016



Public Utility Commission of Texas

### **Title 16, Part 2**

This Order addresses the agency rule review of Chapter 21, Interconnection Agreements for Telecommunications Service Providers, pursuant to Texas Government Code §2001.039, *Agency Review of Existing Rules*. The commission's Chapter 21 Interconnection Agreement rules (Texas Administrative Code, Title 16, Part 2) establish procedures for approving interconnection agreements and resolving open issues pursuant to the Federal Telecommunications Act of 1996 (FTA) §252. The purpose of this review was to consider whether to re-adopt this Chapter. The notice of intention to review Chapter 21 was published in the *Texas Register* on November 20, 2015 (40 TexReg 8345). Project Number 45166 is assigned to this rule review project. Having completed this review, the commission finds that the reasons for initially adopting Chapter 21 continue to exist and re-adopts Chapter 21.

The commission received comments from the Texas Cable Association and Level 3 Communications LLC (Joint Commenters) and TEXALTEL.

#### *General Comments*

Joint Commenters and TEXALTEL recommended that the commission readopt Chapter 21 without modification. Joint Commenters noted that the Interconnection Agreement rules in Chapter 21 establish a clear process for arbitration of interconnection agreements and adjudication of post-interconnection agreement disputes and that the process has worked well overall for both competitors and incumbent local exchange carriers.

Joint Commenters stated that it is premature to either repeal the existing rules or adopt wholesale modification of Chapter 21 in light of the Commission's decision at the November 19, 2015, Open Meeting to initiate a rulemaking proceeding to explore whether it should continue to arbitrate interconnection agreements or cede responsibility for doing so to the Federal Communications Commission (FCC). Joint Commenters noted that commission staff was directed to seek additional input on the possible use of baseball-style arbitration, to explore whether to conduct another mega-arbitration proceeding and to find ways to assure a level of staff expertise in telecommunications matters for arbitration. While Joint Commenters expressed concerns about transferring responsibility for arbitrations to the FCC, it, nevertheless, urged the commission to readopt Chapter 21 and wait to examine its procedural rules until after its inquiry into the commission's future role has concluded.

TEXALTEL, similarly, noted that in November 2015, the Commissioners had agreed to proceed with a project to examine several interconnection related issues including arbitrations, conduct of a proceeding to establish a T2A3 model interconnection agreement and other issues. TEXALTEL opined that the issues raised by the Commissioners are intertwined with Chapter 21 and any philosophical issues that the commission chooses to address may result in modifications of Chapter 21 rules. TEXALTEL did not find it necessary to have two separate proceedings to address the same chapter.

#### *Commission Response*

The commission appreciates the comments submitted by Joint Commenters and TEXALTEL. Given the commission's decision at the November 19, 2015, Open Meeting to initiate a rulemaking to explore whether it should continue to arbitrate interconnection agreements and to seek input on several arbitration process related issues, the commission agrees with Joint Commenters and TEXALTEL that it would be prudent to readopt Chapter 21 without modifications. Chapter 21 is, therefore, readopted without modifications.

The commission readopts Chapter 21, Interconnection Agreements for Telecommunications Service Providers under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 & Supp. 2015), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and Texas Government Code §2001.039 (West 2008 & Supp. 2015) which requires each state agency to review its rules every four years.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002; Texas Government Code §2001.039.

TRD-201601386  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 23, 2016



This Order addresses the agency rule review of Chapter 27, Rules for Administrative Services, pursuant to the Texas Government Code, Administrative Procedure Act (APA), §2001.039, *Agency Review of Existing Rules*. The commission's initial adoption of 16 Texas Administrative Code (TAC) Chapter 27 complies with Texas Government Code §2260.052, which requires the commission to develop rules to govern the negotiation and mediation of certain contract claims against the

state; and Texas Government Code §2155.076, which requires the commission to develop and adopt protest procedures for vendors' protests concerning commission purchases that are consistent with the Texas Facilities Commission's rules on the same subject. The purpose of this review was to consider whether to re-adopt Chapter 27. The notice of intent to review Chapter 27 was published in the *Texas Register* on October 23, 2015 (40 TexReg 7445). Project Number 45167 is assigned to this proceeding. Having completed the review, the commission finds that the reasons for initially adopting Chapter 27 continue to exist and readopts Chapter 27.

The commission received no comments on the proposed review of Chapter 27.

The commission readopts Chapter 27, Rules for Administrative Services, pursuant to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §14.002 and §14.052 (West 2007 and Supp. 2015) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and pursuant to Texas Government Code §2001.039 (West 2008 and Supp. 2015) which requires each state agency to review and readopt its rules every four years.

Cross Reference to Statutes: Texas Government Code §2001.039, Chapter 2155, Subchapter B, Chapter 2161 and Chapter 2260; PURA §14.002 and §14.052.

TRD-201601387  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 23, 2016





# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Comptroller of Public Accounts

### Notice of Contract Award

Pursuant to Chapter 403; Chapter 404, Subchapter G; and Chapter 2254, Subchapter B of the Texas Government Code, the Texas Comptroller of Public Accounts ("Comptroller") announces the award of the following contract as a result of Request for Proposals for Consulting Services for a Centralized Purchasing Study of Texas State Agencies ("RFP 214a"):

RSM US LLP, 13355 Noel Road, Suite 800, Dallas, Texas 75240. The total maximum amount of the contract is \$450,000.00. The term of the contract is March 23, 2016, through June 30, 2017, with one (1) optional one year renewal.

The notice of issuance was published in the January 8, 2016, issue of *Texas Register* (41 TexReg 524).

TRD-201601474

Laurie Velasco

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: March 30, 2016



### Notice of Request for Qualifications

Pursuant to Subchapter A, Chapter 111, §111.0045 of the Texas Tax Code, the Texas Comptroller of Public Accounts ("Comptroller") announces its Request for Qualifications No. 216d ("RFQ") from qualified independent persons or firms to perform tax compliance examination services that meet the requirements of §111.0045 of the Texas Tax Code, administrative rules as codified at 34 Texas Administrative Code §3.3, procedures established by Comptroller under that statute, and other applicable law. For clarification, such services do not include any attestation services or rendition of an opinion of any nature by any such contractors. Under this RFQ, Comptroller reserves the right to select and contract with one or more persons or firms to conduct these examinations on an as-needed basis. The successful respondent(s) will be expected to begin performance of the contract on or after September 1, 2016.

Contact: Parties interested in a hard copy of the RFQ should contact Laurie Velasco, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, 111 E. 17th St., Room 201, Austin, Texas 78774 ("Issuing Office"), telephone number: (512) 305-8673. The RFQ will be available electronically on the *Electronic State Business Daily* ("ESBD") at: <http://esbd.cpa.state.tx.us> on Friday, April 8, 2016, after 10:00 a.m., Central Time (CT). The times stated in this notice refer to Central Time, Austin, Texas.

Questions: All written questions must be received at the above-referenced address not later than 2:00 p.m. CT on Friday, April 22, 2016. Prospective respondents are encouraged to fax or e-mail Questions to (512) 463-3669 or [contracts@cpa.texas.gov](mailto:contracts@cpa.texas.gov) to ensure timely receipt. **Respondents are solely responsible for verifying timely receipt of Questions in the Issuing Office. Late questions will not be considered under any circumstances.** On or about Friday, April 29, 2016,

Comptroller expects to post responses to questions as an addendum to the ESBD notice on the issuance of the RFQ.

Closing Date: Statement of Qualifications must be delivered to the Issuing Office no later than **2:00 p.m. CT, on Friday, May 20, 2016. Statement of Qualifications received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for ensuring the timely receipt of Statement of Qualifications in the Issuing Office.**

Evaluation Criteria: The Statement of Qualifications will be evaluated under the evaluation criteria outlined in the RFQ. Comptroller reserves the right to accept or reject any or all Statements of Qualifications submitted. Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFQ. Comptroller shall not pay for any costs incurred by any party or entity in responding to this notice or the RFQ.

The anticipated schedule of events is as follows: Issuance of RFQ - April 8, 2016, after 10:00 a.m. CT; Questions Due - April 22, 2016, 2:00 p.m. CT; Official Responses to Questions posted - April 29, 2016, or as soon thereafter as practical; Statement of Qualifications Due - **May 20, 2016, 2:00 p.m. CT**, Contract Execution - August 12, 2016, or as soon thereafter as practical; and Commencement of Work - on or after September 1, 2016. Any changes to this solicitation will be posted on the ESBD as a RFQ Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFQ prior to submitting a Statement of Qualifications.

TRD-201601473

Laurie Velasco

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: March 30, 2016



## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/04/16 - 04/10/16 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/04/16 - 04/10/16 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-201601450

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: March 29, 2016

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## Texas Education Agency

### Correction of Error

The Texas Education Agency (TEA) adopted new 19 TAC §113.49, concerning Personal Financial Literacy (One-Half Credit), Adopted 2016, in the April 1, 2016, issue of the *Texas Register* (41 TexReg 2491). On page 2492, the effective date of the new rule is shown as April 6, 2016; however, the correct effective date is August 22, 2016.

TRD-201601459

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## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is May 9, 2016. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on May 9, 2016. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Bayeh's Petroleum, Incorporated dba Fort Sam Chevron; DOCKET NUMBER: 2015-1778-PST-E; IDENTIFIER: RN102400447; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$5,004; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: City of Balch Springs; DOCKET NUMBER: 2015-1761-WQ-E; IDENTIFIER: RN105552640; LOCATION: Balch Springs, Dallas County; TYPE OF FACILITY: small municipal separate storm sewer system; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(a)(9)(i)(A), by failing to maintain authorization to discharge stormwater under a Texas

Pollutant Discharge Elimination System (TPDES) General Permit for small separate storm sewer systems; and 30 TAC §281.25(a)(4), 40 CFR §122.26(a)(9)(i)(A), and TPDES General Permit Number TXR040213, Part IV.B.2., by failing to submit the annual reports for years 2012 and 2013; PENALTY: \$22,500; Supplemental Environmental Project offset amount of \$18,000; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6155; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: City of La Feria; DOCKET NUMBER: 2016-0212-PWS-E; IDENTIFIER: RN101418325; LOCATION: La Feria, Cameron County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: \$732; ENFORCEMENT COORDINATOR: Larry Butler, (512) 239-2543; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(4) COMPANY: City of Opdyke West; DOCKET NUMBER: 2015-1646-PWS-E; IDENTIFIER: RN103788832; LOCATION: Opdyke West, Hockley County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A) and (f), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director (ED) each quarter by the tenth day of the month following the end of the quarter and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit the DLQOR; 30 TAC §290.122(b)(3)(A) and (f), by failing to provide public notification and failed to submit a copy of the public notification to the ED regarding the failure to comply with the maximum contaminant levels for fluoride for the first and second quarters of 2015 and arsenic for the second quarter of 2015; and 30 TAC §290.117(i)(6) and (j), by failing to mail consumer notification of lead tap water monitoring results to persons served at the locations that were sampled and failing to submit to the TCEQ a copy of the consumer notification and certification that the consumer notification has been distributed to the persons served at the locations in a manner consistent with TCEQ requirements for the January 1, 2013 - December 31, 2013, monitoring period; PENALTY: \$685; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(5) COMPANY: City of Rhome; DOCKET NUMBER: 2015-1386-MWD-E; IDENTIFIER: RN102701620; LOCATION: Rhome, Wise County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TWC, §26.121(a)(1), 30 TAC §305.125(1) and (4), and Texas Pollutant Discharge Elimination System Permit Number WQ0010701002, Permit Conditions Number 2.g, by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; PENALTY: \$68,250; Supplemental Environmental Project offset amount of \$54,600; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: City of Teague; DOCKET NUMBER: 2015-1122-MWD-E; IDENTIFIER: RN102181716 (West Wastewater Treatment Facility (WWTF) and RN101607935 (North WWTF); LOCATION: Teague, Freestone County; TYPE OF FACILITY: WWTFs; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010300001, Other Requirements Numbers 5.a and 5.b, by failing to monitor sludge accumulations and water depth in the facultative lagoon and/or stabilization ponds at least once every three years to ensure the ponds maintain

the design storage volume and provide sufficient volume for sludge accumulation (West WWTF); 30 TAC §305.125(1) and (11)(C) and §319.7(a), and TPDES Permit Number WQ0010300001, Monitoring and Reporting Requirements Number 3.c, by failing to properly document monitoring activities (West WWTF); TWC, §26.0301(a), 30 TAC §30.350(d), (e), and (j) and §305.125(1), and TPDES Permit Number WQ0010300001, Other Requirements Number 1, by failing to employ or contract with one or more licensed wastewater treatment facility operators holding the appropriate level of license or a wastewater system operations company holding a valid registration and employing licensed wastewater treatment facility operators holding the appropriate level of license for the facility (West WWTF); 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0010300001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2014, by September 30, 2014 (West WWTF); TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0010300003, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits (North WWTF); and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0010300003, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2014, by September 30, 2014 (North WWTF); PENALTY: \$17,323; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: City of Yorktown; DOCKET NUMBER: 2015-1322-MWD-E; IDENTIFIER: RN103025805; LOCATION: Yorktown, Dewitt County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §30.350(d) and (j) and §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010323001, Other Requirements Number 1, by failing to employ or contract one or more licensed wastewater treatment facility operators holding the appropriate level of license to operate a wastewater treatment facility a minimum of five days per week; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0010323001, Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; and 30 TAC §305.125(1) and (9)(A) and TPDES Permit Number WQ0010323001, Monitoring Requirements Number 7.c., by failing to report in writing any effluent violation which deviates from the permitted effluent limitation by more than 40% to the Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance; PENALTY: \$19,025; Supplemental Environmental Project offset amount of \$15,220; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 58805886; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(8) COMPANY: Couto Homes, Incorporated; DOCKET NUMBER: 2016-0394-WQ-E; IDENTIFIER: RN108968413; LOCATION: Granbury, Parker County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit; PENALTY: \$875; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Durk Zwart dba Zwart Dairy; DOCKET NUMBER: 2016-0013-AGR-E; IDENTIFIER: RN102065281; LOCATION: Dublin, Erath County; TYPE OF FACILITY: concentrated animal feeding operation (CAFO); RULES VIOLATED: 30 TAC §§305.125(1), 321.39(b)(1), 321.42(c)(1) and (d), TWC, §26.121(a)(1), and Texas Pollution Discharge Elimination System (TPDES) Permit Number WQ0005094000, Part VII.A.5(a)(1) and Part IX.D., by failing to prevent a discharge of wastewater from a

CAFO caused by not maintaining a margin of safety in the Retention Control Structure to contain the volume of runoff and direct precipitation from the 25-year/ten-day rainfall event; and 30 TAC §305.125(1) and §321.37(d), TWC, §26.121(a), and TPDES Permit Number WQ0005094000, Part IX.A. and Part IX.D., by failing to prevent the unauthorized discharge of manure, sludge, or wastewater from a CAFO production area; PENALTY: \$6,563; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 580-D West Lingleville Road, Stephenville, Texas 76401, (254) 965-9200.

(10) COMPANY: Faulkey Gully Municipal Utility District; DOCKET NUMBER: 2015-1779-MWD-E; IDENTIFIER: RN102178993; LOCATION: Cypress, Harris County; TYPE OF FACILITY: wastewater system; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011832001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: \$21,937; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Maria Medeles dba Magnolia Gardens and PRINCESS, INCORPORATED dba Magnolia Gardens; DOCKET NUMBER: 2015-1581-PWS-E; IDENTIFIER: RN101225142; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(f)(3) and Texas Health and Safety Code, §341.033(d), by failing to comply with the maximum contaminant level for total coliform during the months of August and September 2014; 30 TAC §290.109(c)(4)(B), by failing to collect one raw groundwater source *Escherichia coli* sample from the facility's well within 24 hours of notification of a distribution total coliform-positive result on a routine sample for the month of August 2012; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to collect a routine distribution water sample for coliform analysis during the month of March 2015; PENALTY: \$930; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Phillips 66 Company; DOCKET NUMBER: 2015-1408-AIR-E; IDENTIFIER: RN102495884; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit (FOP) Number O1440, Special Terms and Conditions (STC) Number 20, and Flexible Permit Numbers 9868A and PSDTX102M7, Special Conditions (SC) Number 1, by failing to prevent unauthorized emissions; 30 TAC §§101.20(3), 116.715(a), and 122.143(4), THSC, §382.085(b), FOP Number O1440, STC Number 20, and Flexible Permit Numbers 9868A and PSDTX102M7, SC Number 8, by failing to comply with the minimum incinerator firebox exit temperature of 1,180 degrees Fahrenheit for the Tail Gas Incinerator (TGI) 43; 30 TAC §§101.20(2), 113.1090, and 122.143(4), THSC, §382.085(b), FOP Number O1440, STC Number 10, and 40 Code of Federal Regulations (CFR) §63.6640(a), by failing to comply with the operational requirements of 40 CFR Part 63 Subpart ZZZZ; 30 TAC §§101.20(3), 116.715(a), and 122.143(4), THSC, §382.085(b), FOP Number O1440, STC Number 20, and Flexible Permit Numbers 9868A and PSDTX102M7, SC Number 53.F., by failing to comply with the nitrogen oxides emissions limit of 0.02 pound per million British thermal units based on a three hour average at the Unit 40 Boiler, Emission Point Number 85B2; and 30 TAC §§101.20(3), 116.715(a), and 122.143(4), THSC, §382.085(b), FOP Number O1440, STC Number 20, and Flexible Permit Numbers

9868A and PSDTX102M7, SC Number 28, by failing to comply with the hydrogen sulfide concentration in the fuel gas used for fire heaters, boilers, and TGIs at or below 162 parts per million by volume for the short-term; PENALTY: \$60,751; Supplemental Environmental Project offset amount of \$24,300; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(13) COMPANY: R.H.A. UNION MANAGEMENT, INCORPORATED dba Texas K Food Mart; DOCKET NUMBER: 2015-1857-PST-E; IDENTIFIER: RN102042652; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month; 30 TAC §334.42(i), by failing to inspect all sumps, including dispenser sumps, manways, overspill containers, or catchment basins associated with the UST system at least once every 60 days to assure that the sides, bottoms, and any penetration points are maintained liquid tight and free of debris and liquid; and 30 TAC §115.241(b)(1)(A) and (4) and Texas Health and Safety Code, §382.085(b), by failing to submit written notification of intent to decommission the Stage II vapor recovery equipment at least 30 calendar days prior to the beginning of any decommissioning activity and failing to notify in writing the TCEQ regional office no later than ten calendar days after completion of all decommissioning activity; PENALTY: \$4,731; ENFORCEMENT COORDINATOR: Tiffany Maurer, (512) 239-2696; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Red River Authority of Texas; DOCKET NUMBER: 2016-0044-PWS-E; IDENTIFIER: RN101233062; LOCATION: Crowell, Foard County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: \$157; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(15) COMPANY: Shell Chemical LP; DOCKET NUMBER: 2015-1741-AIR-E; IDENTIFIER: RN100211879; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: chemical plant; RULES VIOLATED: 30 TAC §§101.20(3), 115.722(c)(1), and 116.115(c), Texas Health and Safety Code, §382.085(b), and New Source Review Permit Numbers 3219 and PSDTX974, Special Conditions Number 1, by failing to prevent unauthorized emissions and failing to limit Highly Reactive Volatile Organic Compounds emissions to 1,200 pounds per one hour block period; PENALTY: \$75,000; Supplemental Environmental Project offset amount of \$37,500; ENFORCEMENT COORDINATOR: Kingsley Coppinger, (512) 239-6581; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: Sunline Energy Services, Incorporated; DOCKET NUMBER: 2015-1750-MLM-E; IDENTIFIER: RN106757099; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: tanker/trailer maintenance and storage yard; RULES VIOLATED: 30 TAC §335.4, by failing to not cause, suffer, allow, or permit the unauthorized disposal of Industrial Solid Waste; and 30 TAC §327.5(a), by failing to immediately abate and contain a spill or discharge of used oil and failing to begin reasonable response actions; PENALTY: \$19,250; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(17) COMPANY: Ted Macon and Lolita Sneathern; DOCKET NUMBER: 2016-0062-PWS-E; IDENTIFIER: RN107698466; LOCATION: Sweeney, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; 30 TAC §290.46(e)(4)(A) and Texas Health and Safety Code (THSC), §341.033(a), by failing to operate the facility under the direct supervision of a water works operator who holds a minimum of a Class D or higher license; 30 TAC §290.45(b)(1)(A)(ii) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 50 gallons per connection; 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; and 30 TAC §290.42(l), by failing to provide a thorough and up-to-date plant operations manual for operator review and reference; PENALTY: \$1,152; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201601445

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 29, 2016



#### Enforcement Orders

An agreed order was adopted regarding Benny's Mart, Inc., Docket No. 2014-1186-PST-E on March 29, 2016 assessing \$7,463 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Rainbow Landscape Materials, LLC, Docket No. 2014-1523-WQ-E on March 29, 2016 assessing \$6,687 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jake Marx, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jerry Alvarado, Docket No. 2015-0017-LII-E on March 29, 2016 assessing \$936 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Audrey Liter, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texas Military Forces, Docket No. 2015-0420-MWD-E on March 29, 2016 assessing \$741.26 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Carroll Harkrider, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding THURMAN TRANSPORTATION, INC., Docket No. 2015-0590-WQ-E on March 29, 2016 assessing \$5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding A&m express group Inc. dba Texstar Food Mart, Docket No. 2015-0720-PST-E on March 29, 2016 assessing \$3,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ian Groetsch, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Diogenes A. Franco, Docket No. 2015-0981-MSW-E on March 29, 2016 assessing \$3,937 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding N R ENTERPRISES INC. dba Exxon Food Mart, Docket No. 2015-1051-PST-E on March 29, 2016 assessing \$3,681 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Ilyas Shaikh Shakoor and Hira Food LLC dba Cowboy Jims Food Mart, Docket No. 2015-1183-PST-E on March 29, 2016 assessing \$3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amanda Patel, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding JR GROCERIES, INC. dba Handi Stop 8, Docket No. 2015-1201-PST-E on March 29, 2016 assessing \$3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ian Groetsch, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding New Jonathon Enterprise Incorporated dba Checkered Flag 11, Docket No. 2015-1293-PST-E on March 29, 2016 assessing \$6,129 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201601470

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 30, 2016



## Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Proposed Air Quality Registration Number 139219

**APPLICATION.** Austin Ready Mix, LLC, P.O. Box 579, Del Valle, Texas 78617-0579 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 139219 to authorize the operation of a concrete batch plant. The facility is proposed to be located at 8277 East U.S. Highway 290, Johnson City, Blanco County, Texas 78636. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=30.201388&lng=-98.252222&zoom=13&type=r>. This application was submitted to the TCEQ on March 1, 2016. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on March 8, 2016.

**PUBLIC COMMENT / PUBLIC HEARING.** Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at [www.tceq.texas.gov/about/comments.html](http://www.tceq.texas.gov/about/comments.html). If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

**The Public Hearing is to be held:**

**Thursday, April 28, 2016, at 7:00 p.m.**

**Lyndon B. Johnson High School Commons Area**

**505 North Nugent**

**Johnson City, Texas 78636**

**RESPONSE TO COMMENTS.** A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

**CENTRAL/REGIONAL OFFICE.** The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Austin Regional Office, located at 12100 Park 35 Circle Bldg A Room 179, Austin, Texas 78753-1808, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

**INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.**

Further information may also be obtained from Austin Ready Mix, LLC, P.O. Box 579, Del Valle, Texas 78617-0579 or by calling Mrs. Kathryn Sipe, Environmental Specialist, Westward Environmental, Inc. at (830) 249-8284.

Notice Issuance Date: March 22, 2016

TRD-201601471

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 30, 2016



#### Notice of Correction to Agreed Order Number 25

In the February 12, 2016, issue of the *Texas Register* (41 TexReg 1145), the Texas Commission on Environmental Quality published notice of Agreed Orders, specifically item Number 25, for Texas Barge and Boat, Incorporated. The reference to rules violated and penalty should be corrected to read: RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O1698, General Terms and Conditions (GTC) and Special Terms and Conditions Number 15, by failing to submit a Permit Compliance Certification within 30 days after the end of the certification period; and 30 TAC §122.143(4) and §122.145(2)(C), THSC, §382.085(b), and FOP Number O1698, GTC, by failing to submit a deviation report no later than 30 days after the end of the reporting period; PENALTY: \$10,650.

For questions concerning this error, please contact Melissa Cordell at (512) 239-2483.

TRD-201601446

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 29, 2016



#### Notice of Opportunity to Comment on Agreed Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Order (AO) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 9, 2016**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considera-

tions that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of the proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 9, 2016**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

COMPANY: Gordon R. Morris d/b/a Space Estates Mobile Home Park and Leslie L. Morris d/b/a Space Estates Mobile Home Park; DOCKET NUMBER: 2014-1847-PWS-E; TCEQ ID NUMBER: RN103998811; LOCATION: 13826 East Hardy Road, Houston, Harris County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.117(c)(2)(B) and (C) and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed at an approved laboratory and submit the results to the executive director; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notifications and submit copies of the public notifications to the executive director; PENALTY: \$2,229; STAFF ATTORNEY: J. Amber Ahmed, Litigation Division, MC 175, (512) 239-1204; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201601443

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 29, 2016



#### Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 9, 2016**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory au-

thority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 9, 2016**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Binh Pham; DOCKET NUMBER: 2015-0660-WQ-E; TCEQ ID NUMBER: RN107752131; LOCATION: approximately 0.75 mile from the intersection of Manning Lane and State Highway 21, Crockett, Houston County; TYPE OF FACILITY: farm land; RULES VIOLATED: 30 TAC §281.25(a)(4), 40 Code of Federal Regulations (CFR) §122.26(c), and Texas Pollutant Discharge Elimination System (TPDES) General Permit (GP) Number TXR150013353, Part III, Sections F(2)(a)(i) and (ii), F(4)(d), F(6)(a), and Part VII, Numbers 1 and 9, by failing to implement and maintain effective sediment controls at the site; 30 TAC §281.25(a)(4), 40 CFR §122.26(c), and TPDES GP Number TXR150013353, Part III, Section F(1)(c), by failing to include a description of the intended schedule or sequence of activities that will disturb soils for major portions of the site, including estimated start dates and duration of activities in the site's storm water pollution prevention plan (SWP3); 30 TAC §281.25(a)(4), 40 CFR §122.26(c), and TPDES GP Number TXR150013353, Part III, Section F(1)(e), by failing to include data describing the soil or the quality of any discharge from the site in the site's SWP3; 30 TAC §281.25(a)(4), 40 CFR §122.26(c), and TPDES GP Number TXR150013353, Part III, Section F(1)(g)(v), by failing to include the locations of construction support activities, including off-site activities that are authorized under the Notice of Intent (NOI), including material, waste, borrow, fill, or equipment or chemical storage areas in the site map; 30 TAC §281.25(a)(4), 40 CFR §122.26(c), and TPDES GP Number TXR150013353, Part III, Section F(1)(k), by failing to include the NOI and acknowledgement certificate for primary operators of large construction sites; TWC, §26.121(a)(1), 30 TAC §281.25(a)(4), 40 CFR §122.26(c), and TPDES GP Number TXR150013353, Part III, Sections F(2)(c)(i)(B), F(4)(e), F(6)(a), G(1), and Part VII Numbers 1, 8, and 9, by failing to prevent an unauthorized discharge of waste into or adjacent to water in the state; and 30 TAC §281.25(a)(4), 40 CFR §122.26(c), and TPDES GP Number TXR150013353, Part III, Sections F(2)(c) and F(2)(c)(i)(A)(1), by failing to include a description of any sediment control practices used to remove eroded soils from storm water runoff and to include the capacity calculations for the site's sedimentation basins in the site's SWP3; PENALTY: \$8,263; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: KENNARD'S THOMAS CORNER, LLC dba Thomas Corner Fine Fina; DOCKET NUMBER: 2015-1405-PST-E; TCEQ ID NUMBER: RN101817419; LOCATION: 212 State Highway 7 East, Kennard, Houston County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store; RULES VIOLATED: 30 TAC §334.7(d)(1) and (3), by failing to provide an amended registration for any change or additional information regarding the UST system within 30 days of the occurrence of the change or addition; and 30 TAC §334.47(a)(2), by failing to

permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: \$5,000; STAFF ATTORNEY: Clayton Smith, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: SCHMIDT LAND SERVICES, INC.; DOCKET NUMBER: 2015-0784-WQ-E; TCEQ ID NUMBER: RN107305567; LOCATION: 1105 Simmons Avenue, Jourdanton, Atascosa County; TYPE OF FACILITY: maintenance facility with industrial cleaning activities; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent an unauthorized discharge of wastewater into or adjacent to any water in the state; PENALTY: \$1,312; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201601444

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 29, 2016



### Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of SPEEDEXX ENTERPRISE INC. d/b/a Speedexx Food Store

SOAH Docket No. 582-16-3112

TCEQ Docket No. 2015-1222-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

**10:00 a.m. - April 28, 2016**

**William P. Clements Building**

**300 West 15th Street, 4th Floor**

**Austin, Texas 78701**

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed January 4, 2016 concerning assessing administrative penalties against and requiring certain actions of SPEEDEXX ENTERPRISE INC. d/b/a Speedexx Food Store, for violations in Harris County, Texas, of: 30 Tex. Admin. Code §334.72 and §334.74.

The hearing will allow SPEEDEXX ENTERPRISE INC. d/b/a Speedexx Food Store, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford SPEEDEXX ENTERPRISE INC. d/b/a Speedexx Food Store, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of SPEEDEXX ENTERPRISE INC. d/b/a Speedexx Food Store to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true,**

and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. SPEEDEXX ENTERPRISE INC. d/b/a Speedexx Food Store, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and chs. 7 and 26, and 30 Tex. Admin. Code chs. 70 and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §70.108 and §70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Jess Robinson, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at <http://www.tceq.texas.gov/goto/eFilings> or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: March 28, 2016

TRD-201601472

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 30, 2016

## Texas Ethics Commission

### List of Late Filers

Below is a list from the Texas Ethics Commission of names of filers who did not file a report or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Sue Edwards at (512) 463-5800.

#### Deadline: Semiannual Report due July 15, 2015

Mike W. Bush, 204 Woodhew Dr., Waco, Texas 68754

Lawrence D. Gilstrap, 6500 Purvis Rd., Silsbee, Texas 77656

Robert E. Johnson, 1122 Colorado #208, Austin, Texas 78701

Michael K. Stewart, 502 W. 13th St., Austin, Texas 78701-1827

#### Deadline: 8-day Pre-election Report due October 26, 2015

Albert G. Gonzales, P.O. Box 87069, Houston, Texas 77287-7069

#### Deadline: Lobby Activities Report due September 10, 2015

Will Galloway, 206 E. 9th St., Ste. 1501, Austin, Texas 78701

#### Deadline: Lobby Activities Report due October 13, 2015

Will Galloway, 206 E. 9th St., Ste. 1501, Austin, Texas 78701

Anthony Holm, P.O. Box 427, Austin, Texas 78767

Brett R. Kerr, 717 Texas St., Ste. 1000, Houston, Texas 77002

Roberto Maldonado, 924 McCullough Ave., San Antonio, Texas 78215

Dimple Patel, 4017 Herschel Ave., Apt. 4, Dallas, Texas 75219

Ward Wyatt, 3018 Windsor Rd., Austin, Texas 78703

#### Deadline: Lobby Activities Report due November 10, 2015

Fred Aus, 7401 Breccourt Manor Way, Austin, Texas 78739

Will Galloway, 206 E. 9th St., Ste. 1501, Austin, Texas 78701

Anthony Holm, P.O. Box 427, Austin, Texas 78767

Roberto Maldonado, 924 McCullough Ave., San Antonio, Texas 78215

Ward Wyatt, 3018 Windsor Rd., Austin, Texas 78703

TRD-201601396

Natalia Luna Ashley

Executive Director

Texas Ethics Commission

Filed: March 24, 2016

## Texas Facilities Commission

### Request for Proposals #303-6-20554

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC), the Department of Family and Protective Services (DFPS), and the Department of Aging and Disability Services (DADS), announces the issuance of Request for Proposals (RFP) #303-6-20554. TFC seeks a five (5) or ten (10) year lease of approximately 7,108 square feet of office space in Silsbee, Texas.

The deadline for questions is April 12, 2016, and the deadline for proposals is April 26, 2016, at 3:00 p.m. The award date is May 18, 2016. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=123593](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=123593).

TRD-201601449

Kay Molina

General Counsel

Texas Facilities Commission

Filed: March 29, 2016

## Department of Family and Protective Services

### Cancellation of Invitation for Offers for Consultant Contract

The Department of Family and Protective Services' (DFPS) invitation for offers for a consultant contract for the purposes of performing implementation activities related to the DFPS Transformation Initiative,

notice of which was published in the March 11, 2016, issue of the *Texas Register* (41 TexReg 2009), has been canceled.

TRD-201601397

Trevor Woodruff

General Counsel

Department of Family and Protective Services

Filed: March 24, 2016

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## Texas Health and Human Services Commission

Public Notice - Amendment to the Texas State Plan for Medical Assistance under Title XIX of the Social Security of the Social Security Act

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of the amendment is to update the fee schedule in the current state plan by adjusting or implementing the fee for Clinical Diagnostic Laboratory Services. The proposed amendment is effective May 1, 2016.

The proposed amendment is estimated to result in an additional annual aggregate expenditure of \$274 for the remainder of federal fiscal year (FFY) 2016, consisting of \$156 in federal funds and \$118 in state general revenue. For FFY 2017, the estimated additional annual expenditure is \$658, consisting of \$370 in federal funds and \$288 in state general revenue. For FFY 2018, the estimated additional expenditure is \$602, consisting of \$370 federal funds and \$232 in state general revenue.

**Rate Hearing.** A rate hearing is scheduled May 11, 2016, at 1:30 p.m. in Austin, Texas, and information about the proposed rate changes (including methodology and justification) and the hearing can be found in the *Texas Register* at <http://www.sos.state.tx.us/texreg/index.shtml>.

**Copy of Proposed Amendment.** Interested parties may obtain a free copy of the proposed amendment by contacting Rate Analysis by mail at Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by telephone at (512) 730-7401; by fax at (512) 730-7475; or by email at [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). Copies of the proposed amendment will be available for review at the local county offices of the Texas Department of Aging and Disability Services.

**Written Comments.** Written comments and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

### U.S. Mail

Texas Health and Human Services Commission

Attention: Rate Analysis, Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

### Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

Attention: Rate Analysis, Mail Code H-400

Brown-Heatly Building

4900 North Lamar

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

### Fax

Attention: Rate Analysis at (512) 730-7475

### Email

[RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us)

TRD-201601416

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: March 24, 2016

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## Department of State Health Services

### Correction of Error

The Department of State Health Services (department) adopted amendments to 25 TAC §§97.1 - 97.7 and §97.13, concerning the control of communicable diseases, in the March 25, 2016, issue of the *Texas Register* (41 TexReg 2317). Two errors appeared in the adoption notice.

On page 2318, second column, sixth paragraph, the phrase "from 'a week' to 'one day'" should have been "from 'one day' to 'a week'". The corrected paragraph reads as follows:

COMMENT: Concerning §97.4(a)(1), an infection preventionist from the Houston Methodist San Jacinto Hospital submitted a comment about changing the reporting time frame of the multidrug-resistant organisms (MDRO) from "one day" to "a week."

On page 2321, the phrase "*Neisseria meningitidis*" in §97.3(a)(4) should have been italicized. The corrected paragraph reads as follows:

(4) Diseases requiring submission of cultures. For all anthrax (*Bacillus anthracis*); botulism, adult and infant (*Clostridium botulinum*); brucellosis (*Brucella* species); all *Haemophilus influenzae*, invasive, in children under five years old (*Haemophilus influenzae* from normally sterile sites); listeriosis (*Listeria monocytogenes*); meningococcal infection, invasive (*Neisseria meningitidis* from normally sterile sites or purpuric lesions); plague (*Yersinia pestis*); Shiga toxin-producing *Escherichia coli* infection (*E.coli* O157:H7, isolates or specimens from cases where Shiga toxin activity is demonstrated); *Staphylococcus aureus* with a vancomycin MIC greater than 2 µg/mL; tuberculosis (*Mycobacterium tuberculosis* complex); tularemia (*Francisella tularensis*); and vibriosis (*Vibrio* species) - pure cultures (or specimens as indicated in this paragraph) shall be submitted accompanied by a current department Specimen Submission Form.

TRD-201601460

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## Texas Department of Housing and Community Affairs

### Request for Proposal from Firms Interested in Providing Services of a Master Servicer

The Texas Department of Housing and Community Affairs ("TDHCA") is issuing this Request for Proposal (RFP) #332-RFP16-1007 from firms interested in providing services of a Master Servicer to secure commitment from Fannie Mae, Freddie Mac and Ginnie Mae, purchasing loans from participating lenders, warehousing and pooling the loans, servicing the loans, issuing Fannie Mae, Freddie Mac and Ginnie Mae certificates, and selling the certificates to the Program's Bond Trustee or other investors as directed by TDHCA.

Responses to the RFP must be received at TDHCA no later than 2:00 p.m. Austin local time on Friday, April 29, 2016. To obtain a copy of the RFP, please email your request to the attention of Julie Dumbbeck at [julie.dumbbeck@tdhca.state.tx.us](mailto:julie.dumbbeck@tdhca.state.tx.us) or visit the TDHCA web page under *What's New*, or the Bond Finance Division web page at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us).

TRD-201601453

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Filed: March 29, 2016



## Texas Department of Licensing and Regulation

### Notice of Vacancies on Dyslexia Therapists and Practitioners Advisory Committee

The Texas Department of Licensing and Regulation (Department) announces vacancies on the Dyslexia Therapists and Practitioners Advisory Committee (Committee) established by Texas Occupations Code, Chapter 403 (Act). The purpose of the Dyslexia Therapists and Practitioners Advisory Committee is to advise the Texas Commission of Licensing and Regulation (Commission) regarding rules relating to the licensure and regulation of dyslexia therapists and dyslexia practitioners, including continuing education requirements and the approved examinations for licensure.

The Committee consists of five members appointed by the presiding officer of the Commission, with the Commission's approval. The Committee consists of the following members:

- (1) two dyslexia therapists licensed under the Act;
- (2) one dyslexia practitioner licensed under the Act; and
- (3) two consumer or public members, one of whom must be a person with dyslexia or the parent of a person with dyslexia.

This announcement is to fill all five Committee vacancies. Members serve staggered six-year terms, at the will of the Commission. The terms of three of the members begin on December 31st of each odd-numbered year. Service is voluntary and compensation is not authorized by law.

Interested persons should submit an application on the Department website at: <https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx>. Applicants can also request an application from the Department by telephone at (800) 803-9202, fax at (512) 475-2874 or e-mail at [advisory.boards@tdlr.texas.gov](mailto:advisory.boards@tdlr.texas.gov).

TRD-201601467

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: March 29, 2016



## North Central Texas Council of Governments

### Auto Occupancy Detection and Verification Technology Request for Proposals

The North Central Texas Council of Governments (NCTCOG), in consultation and with the support of the Texas Department of Transportation (TxDOT), is seeking technology to automatically detect and verify vehicle occupancy for users of tolled managed lane and Express/HOV facilities in the Dallas-Fort Worth region. Occupancy verification will

be used to apply a toll discount for qualifying high occupancy vehicles consistent with the Regional Transportation Council's (RTCs) Toll Managed Lane Policies. Technology procured through this RFP should have the ability to be implemented not only in the Dallas-Fort Worth region, but in a seamless fashion on TxDOT managed lane and express/HOV facilities throughout the State of Texas. Services and work include documentation, design, testing, integration support services to the existing toll system, installation, and maintenance and warranty of the solution provided. NCTCOG recognizes this is a new and innovative application of technology and is interested in any and all solutions.

Proposals must be received no later than 5:00 p.m., on Friday, May 20, 2016, to Natalie Bettger, Senior Program Manager, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. Copies of the Request for Proposals (RFP) will be available at [www.nctcog.org/rfp](http://www.nctcog.org/rfp) by the close of business on Friday, April 8, 2016.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-201601475

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: March 30, 2016



### Notice of Vendor Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of vendor contract award. The vendor request for qualifications and interest appeared in the May 22, 2015, issue of the *Texas Register* (40 TexReg 2854). The selected vendor will perform technical and professional work to develop a corridor master plan for State Highway 199 (Jacksboro Highway) related to Federal Highway Administration (FHWA) funds.

The vendor selected for this project is Freese and Nichols, Inc., 4055 International Plaza, Suite 200, Fort Worth, Texas 76109. The amount of the contract is not to exceed \$694,600.

TRD-201601468

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: March 29, 2016



### Notice of Vendor Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of vendor contract award. The vendor request for qualifications and interest appeared in the November 13, 2015, issue of the *Texas Register* (40 TexReg 8059). The selected vendor(s) will provide their technology for testing as part of for the Heavy-Duty Diesel Inspection and Maintenance Pilot - Phase 2. Phase 2 efforts will be funded with Federal Highway Administration (FHWA) funds.

The vendors selected for this project are ETEST Corp, 7 Kripes Road, East Granby, Connecticut 06026 and MKS Instruments, 2 Tech Drive, Suite 201, Andover, Massachusetts 01810. There is no reimbursement to the vendors selected for participation in this project.

TRD-201601469

R. Michael Eastland  
Executive Director  
North Central Texas Council of Governments  
Filed: March 29, 2016

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**Public Utility Commission of Texas**

**Notice of Application for Sale, Transfer, or Merger**

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on March 25, 2016, pursuant to the Public Utility Regulatory Act, Tex. Util. Code Ann. §39.154 and §39.158.

Docket Style and Number: Application of Atlas Power Finance, LLC for Approval Pursuant to Section §39.158 of the Public Utility Regulatory Act, Docket Number 45764.

The Application: On March 25, 2016, Atlas Power Finance, LLC (Atlas Power Finance) a wholly-owned subsidiary of Atlas Power, LLC, which is a newly-formed joint venture between Dynegy Inc. and Energy Capital Partners III, LLC filed an application for approval of the proposed purchase of GDF SUEZ Energy North America, Inc. (GSENA). A stock purchase agreement, entered into by Atlas Power Finance, GSENA, and International Power S.A., provides for the purchase of all outstanding shares in GSENA by Atlas Power Finance. The combined generation owned and controlled by Atlas Power Finance, GSENA, and their affiliates following the proposed sale exceeds one percent of the total electricity offered for sale in ERCOT.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 45764.

TRD-201601461  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 29, 2016

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**Notice of Application for Sale, Transfer, or Merger**

Notice is given to the public of an application filed with the Public Utility Commission of Texas on March 25, 2016, pursuant to the Texas Water Code.

Docket Style and Number: Application of G-M Water Supply Corporation for Sale, Transfer, or Merger of Frontier Park Resort & Marina's Facilities and Certificate Rights in Sabine County, Docket Number 45762.

The Application: G-M Water Supply Corporation filed an application for sale, transfer, or merger of facilities and certificate of convenience and necessity (CCN) rights in Sabine County. G-M Water Supply seeks approval to acquire all of the water system assets of Frontier Park held under water CCN No. 12689. The Texas Commission on Environmental Quality requested that G-M Water Supply take over providing water services to Frontier Park customers because of Frontier Park's well system violations.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 45762.

TRD-201601466  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 29, 2016

◆ ◆ ◆  
**Notice of Application for Transfer of Responsibility for Administration of Nuclear Decommissioning Trust**

Notice is given to the public of an application for transfer of responsibility for administration of nuclear decommissioning trust filed with the Public Utility Commission of Texas on March 22, 2016, pursuant to the Public Utility Regulatory Act, Tex. Util. Code Ann. §39.205 (West 2007 & Supp. 2015) (PURA).

Docket Style and Number: Application of Luminant Generation Company, LLC and Oncor Electric Delivery Company, LLC to Transfer Ownership and Administration of the Comanche Peak Nuclear Power Plant Decommissioning Trust Pursuant to §39.205 of the Public Utility Regulatory Act and §25.303(d) of 16 Tex. Admin. Code, Docket Number 45753.

The Application: Luminant Generation Company, LLC (Luminant), acting on behalf of itself and TEX Energy LLC, TEX Intermediate Company LLC, TEX Operations Company LLC TEX Asset Company LLC, TEX Preferred LLC, and TEX CP Company LLC (CP LLC) and Oncor Electric Delivery Company, LLC (Oncor) filed, pursuant to PURA §39.205 and 16 Tex. Admin. Code §25.303(d) an application for approval of the transfer of the responsibility of administering the funds for the nuclear decommissioning trust for the Comanche Peak Nuclear Power Plant Units 1 and 2 from Luminant to CP LLC, as owner/trustee.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45753.

TRD-201601401  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 24, 2016

◆ ◆ ◆  
**Notice of ERCOT's Filing for Approval of Re-Election of Unaffiliated Director**

Notice is hereby given to the public of the March 25, 2016, filing with the Public Utility Commission of Texas (commission) of a petition of the Electric Reliability Council of Texas (ERCOT) for approval of

re-election of an unaffiliated director pursuant to Public Utility Regulatory Act §39.151.

Docket Style and Number: Petition of the Electric Reliability Council of Texas for Approval of Re-Election of Unaffiliated Director, Docket Number 45763.

The Application: On March 25, 2016, ERCOT filed with the commission a petition for approval of the re-election of Mr. Jorge Bermudez to a third and final term as an Unaffiliated Director of the ERCOT Board of Directors. ERCOT requests approval of the re-election of Mr. Bermudez to service on the ERCOT Board beginning July 1, 2016.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission at P.O. Box 13326, Austin, Texas 78711-3326 or call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 45763.

TRD-201601447  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 29, 2016



### Notice of Public Meeting

The staff of the Public Utility Commission of Texas (PUC or Commission) will hold a public meeting on Thursday, May 12, 2016, to discuss the overlay of a new area code in the geographic area of the 210 area code. The 210 area code is running out of telephone numbers so another area code will need to be added to the San Antonio area by the third quarter of 2018. An all-services overlay means that customers will not be required to change their existing telephone numbers. All customers in the 210 area code will be required to use 10-digit dialing. Phone numbers using the new area code will be provided when the 210 area code numbers are exhausted. The staff will be prepared to take public comments and answer questions regarding the addition of the new area code. The Commission is scheduled to make the final decision in the summer of 2016.

The meeting will begin at 2:00 p.m. at the Alamo Area Council of Governments (AACOG), 8700 Tesoro Drive #160, San Antonio, Texas 78217 in the Al J. Notzon Board Room. Project Number 45224, *Numbering Plan Area Code Relief Planning for the 210 Area Code*, has been established for this proceeding.

Persons planning to attend this meeting who have disabilities requiring auxiliary aids or services should notify the Commission as far in advance as possible so that appropriate arrangements can be made. Requests can be made to Gabriel Cardenas at (512) 936-7046, [gabriel.cardenas@puc.texas.gov](mailto:gabriel.cardenas@puc.texas.gov), or by writing to 1701 N. Congress Avenue, Austin, Texas 78711-3326. Teletypewriter for the hearing impaired may use (512) 936-7136.

TRD-201601451  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 29, 2016



### Public Notice of Workshop and Request for Comments

Staff of the Public Utility Commission of Texas (commission staff) will hold a workshop regarding Project No. 45625, *Rulemaking Relating to the Use of Hand-Held Devices for Retail Electric Customer Enrollment* on Friday, May 6, 2016, at 9:30 a.m. The workshop will be held in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Prior to the workshop, commission staff will make a copy of the meeting agenda available by May 2, 2016, in Central Records under Project No. 45625.

In preparation for the workshop, commission staff requests comments from interested parties on the questions listed below. Parties are invited to submit written comments in response to staff's questions by filing sixteen copies of such comments with the commission's Central Records no later than 3:00 p.m. on Friday, April 22, 2016. Parties are invited to file reply comments by filing sixteen copies of such responses with Central Records no later than 3:00 p.m. on Monday, May 2, 2016. All comments should reference Project No. 45625 and should be limited to 20 pages.

Questions concerning the workshop or this notice should be referred to James Kelsaw, Competitive Markets Division, at (512) 936-7338 or [james.kelsaw@puc.texas.gov](mailto:james.kelsaw@puc.texas.gov). Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

### QUESTIONS

1. What devices should be considered a "hand-held electronic device" when engaging in customer enrollments through door-to-door sales?
  - a. What minimum attributes should the device have that will still apply in the future as technology changes?
  - b. What protections for the storage of customer's data should the device have? Why?
2. What authorization should be required to ensure protection for customers who enroll in door-to-door sales using a hand-held electronic device?
  - a. Should an "opt-in" authorization be required instead of the current "opt-out" authorization? Please provide a detailed explanation.
  - b. Should customers be required to provide two forms of account access verification data pursuant to §25.474(d)(10)(E) before they can enroll during a door-to-door sale when the sales agent is using a hand-held electronic device?
  - c. Should an oral verification statement by the customer be recorded with the hand-held electronic device? Please provide a detailed explanation.
3. Should customers without an email address be allowed to enroll via a hand-held device? Please provide a detailed explanation.
4. If the answer to Question No. 3 is answered in the affirmative, please provide a detailed description of what authorizations should be put in place to ensure that the customer has not been misled or coerced into accepting certain service.
5. Should a REP be allowed to enroll a non-English speaking customer during a door-to-door sale using a hand-held electronic device if its sales agent does not speak the same language as the customer?
6. Should the commission amend 16 Tex. Admin. Code §25.474(f) to require door-to-door enrollment using a hand-held electronic device to follow the required authorization disclosures in 16 TAC §25.474(d)(1) - (9) and the verification of authorization for enrollment in 16 TAC §25.474(d)(10) - (11) in lieu of the authorization and verification of authorization in 16 TAC §25.474(f)(2) - (3)?

◆ ◆ ◆  
**Supreme Court of Texas**

In the Supreme Court of Texas

Misc. Docket No. 16-9032

**ORDER AMENDING COMMENTS TO THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT AND THE TEXAS RULES OF DISCIPLINARY PROCEDURE**

**ORDERED** that:

1. The comment to Rule 1.06, Texas Disciplinary Rules of Professional Conduct, is amended to add paragraph 19, as published in this order.
2. Paragraph 5 of the comment to Rule 1.09, Texas Disciplinary Rules of Professional Conduct, is amended as published in this order.
3. Rule 13.03, Texas Rules of Disciplinary Procedure, is amended to add the comment published in this order.
4. The Clerk is directed to:
  - a. file a copy of this order with the Secretary of State;
  - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
  - c. send a copy of this order to each elected member of the Legislature; and
  - d. submit a copy of the order for publication in the *Texas Register*.

Dated: March 22, 2016.

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Nathan L. Hecht, Chief Justice

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Paul W. Green, Justice

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Phil Johnson, Justice

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Don R. Willett, Justice

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Eva M. Guzman, Justice

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Debra H. Lehrmann, Justice

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Jeffrey S. Boyd, Justice

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John P. Devine, Justice

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Jeffrey V. Brown, Justice

The comment to Rule 1.06, Texas Disciplinary Rules of Professional Conduct, is amended as follows:

**Rule 1.06. Conflict of Interest: General Rule**

\* \* \*

Comment:

\* \* \*

Imputed Conflicts, Nonlawyer Employees, and Lawyers Formerly Employed in a Nonlawyer Role

19. A law firm is not prohibited from representing a client under paragraph (f) merely because a nonlawyer employee of the firm, such as a paralegal or legal secretary, has a conflict of interest arising from prior employment or some other source. Nor is a firm prohibited from representing a client merely because a lawyer of the firm has a conflict of interest arising from events that occurred before the person became a lawyer, such as work that the person did as a law clerk or intern. But the firm must ordinarily screen the person with the conflict from any personal participation in the matter to prevent the person's communicating to others in the firm confidential information that the person and the firm have a legal duty to protect. See Rule 5.03; see also MODEL RULES PROF'L CONDUCT r. 1.10 cmt. 4 (AM. BAR ASS'N 1983); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §123 cmt. f (AM. LAW INST. 2000).

The comment to Rule 1.09, Texas Disciplinary Rules of Professional Conduct, is amended as follows:

**Rule 1.09. Conflict of Interest: Former Client**

\* \* \*

Comment:

\* \* \*

5. Paragraph (b) extends paragraph (a)'s limitations on an individual lawyer's freedom to undertake a representation against that lawyer's former client to all other lawyers who are or become members of or associated with the firm in which that lawyer is practicing. Thus, for example, if a client severs the attorney-client relationship with a lawyer who remains in a firm, the entitlement of that individual lawyer to undertake a representation against that former client is governed by paragraph (a); and all other lawyers who are or become members of or associated with that lawyer's firm are treated in the same manner by paragraph (b). Similarly, if a lawyer severs his or her association with a firm and that firm retains as a client a person whom the lawyer personally represented while with the firm, that lawyer's ability thereafter to undertake a representation against that client is governed by paragraph (a); and all other lawyers who are or become members of or associates with that lawyer's new firm are treated in the same manner by paragraph (b). See also paragraph 19 of the comment to Rule 1.06.

\* \* \*

The following comment is added to Rule 13.03, Texas Rules of Disciplinary Procedure:

**13.03. Hearing and Order on Application to Assume Jurisdiction**

\* \* \*

Comment: Chapter 456, Estates Code, authorizes the personal representative of a deceased attorney to designate an attorney--including him- or herself, if the personal representative is an attorney--to disburse and close the deceased attorney's trust or escrow accounts for client funds. See TEX. EST. CODE §456.002. Before appointing an attorney to wind up a deceased attorney's practice under this rule, the court should determine whether the deceased attorney's personal representative has designated an attorney under Chapter 456 to close the deceased attorney's trust and escrow accounts.



In the Supreme Court of Texas

Misc. Docket No. 16-9036

**ORDER AMENDING STANDARDS FOR ATTORNEY CERTIFICATION IN CIVIL TRIAL LAW**

**ORDERED** that:

1. The Court approves the following amendments to the Standards for Attorney Certification by the Texas Board of Legal Specialization in Civil Trial Law. This order includes a clean copy and an approximate redline copy of the amended standards. The clean copy is the official version. The amendments are effective immediately.
2. The Clerk is directed to:
  - a. file a copy of this order with the Secretary of State;
  - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
  - c. send a copy of this order to each elected member of the Legislature; and
  - d. submit a copy of the order for publication in the *Texas Register*.

Dated: March 22, 2016.

\_\_\_\_\_  
Nathan L. Hecht, Chief Justice

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Paul W. Green, Justice

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Phil Johnson, Justice

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Don R. Willett, Justice

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Eva M. Guzman, Justice

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Debra H. Lehrmann, Justice

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Jeffrey S. Boyd, Justice

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John P. Devine, Justice

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Jeffrey V. Brown, Justice

**TEXAS BOARD OF LEGAL SPECIALIZATION  
STANDARDS FOR ATTORNEY CERTIFICATION  
PART II  
SPECIFIC AREA REQUIREMENTS**

These are specific requirements that apply the specialty area listed below. The specific requirements include the definitions, substantial involvement, reference, and other certification and recertification requirements for the specialty area. You will also need to refer to the Standards for Attorney Certification, Part I - General Requirements for requirements that apply to all specialty areas.

**SECTION V**

**CIVIL TRIAL LAW**

(Area ID: CT / Year Started: 1978)

**A. DEFINITIONS.**

1. Civil trial law is the practice of law dealing with litigation of civil controversies in all areas of substantive law before state and federal courts of record.
2. A trial is a contested proceeding in a court of record within the judicial branch of government that involves the submission of testimonial evidence to a court or jury in support or defense of claims for relief submitted by the parties. A trial commences on the initial presentation of evidence to the court or jury. Summary judgment proceedings, other pretrial proceedings, default judgments, and civil appeals are not trials within the meaning of these standards.
3. Lead counsel is the lawyer who takes primary responsibility for the representation of the client in the case. In a jury case, to be considered lead counsel, applicant must, at a minimum, have made an opening statement or closing argument and conducted significant direct or cross-examination of live witnesses at trial.

**B. SUBSTANTIAL INVOLVEMENT.** To demonstrate substantial involvement and special competence in Texas civil trial law practice, applicant must, at a minimum, meet the following requirements.

1. Certification.

- a. Percentage of Practice Requirement. Applicant must have devoted a minimum of 35% of his or her time practicing civil trial law in Texas during each year of the three years immediately preceding the application.
- b. Task Requirements. Applicant must provide information as required by TBLS concerning specific tasks he or she has performed in Texas civil trial law. In evaluating experience, TBLS may take into consideration the nature, complexity, and duration of the tasks handled by applicant.

(1) Applicant must have tried at least 20 civil trials in a court of record in Texas or in federal court that involved an amount in controversy in excess of \$25,000 or significant nonmonetary claims. Of these trials:

- i. at least seven must be jury trials that were conducted by applicant as lead counsel and submitted to the jury;
- ii. no more than seven may be personal injury cases;
- iii. no more than seven may be family law cases; and
- iv. in at least five trials, applicant must have played a significant role in conducting jury selection.

(2) The following types of proceedings may be substituted for three of the other 13 civil trials.

- i. A civil jury trial conducted by applicant as lead counsel in a state court of record *outside* of Texas, but within the United States, where the case was submitted to the jury for decision. The amount in controversy must have exceeded \$25,000, or the case must have involved significant nonmonetary claims. Formal rules of evidence and procedure must have applied in the case.

ii. A civil trial conducted by applicant as lead counsel that concluded before submission to either a jury or the court (in a bench trial) in a court of record in Texas or in federal court. The trial must have concluded: (a) after voir dire, opening statements, and the examination of witnesses in a jury trial; or (b) after opening statements and the examination of witnesses in a bench trial. The amount in controversy must have exceeded \$25,000, or the case must have involved significant non-monetary claims.

iii. An arbitration conducted to a final decision by applicant as lead counsel in which formal rules of evidence and procedure governed the proceeding. The amount in controversy must have exceeded \$25,000, or the case must have involved significant nonmonetary claims.

iv. A criminal jury trial conducted by applicant as lead counsel that resulted in a final verdict in a court of record in Texas or in federal court.

v. A contested administrative proceeding conducted by applicant as lead counsel for a party before a Texas or federal agency. The matter must have been resolved after a hearing on the merits in which witnesses were examined by direct and cross-examination, and a final order must have been issued by the agency. The amount in controversy must have exceeded \$25,000, or the case must have involved significant nonmonetary claims.

vi. A temporary or preliminary injunction hearing conducted by applicant as lead counsel that resulted in a final decision on the temporary or preliminary injunction request. In the hearing, applicant must have presented an opening and closing statement and conducted live direct and cross-examination of witnesses. The amount in controversy must have exceeded \$25,000, or the case must have involved significant non-monetary claims.

2. Recertification. Applicant must have devoted a minimum of 35% of his or her time practicing civil trial law in Texas during each year of the five-year period of certification unless applicant meets the exception in Part I-General Requirements, Section VI, C,1(b).

C. REFERENCE REQUIREMENTS. Applicant must submit a minimum of five names and addresses of persons to be contacted as references to attest to his or her competence in civil trial law. These persons must be substantially involved in civil trial law and be familiar with applicant's civil trial law practice.

1. Certification. Applicant must submit names of persons with whom he or she has had dealings involving civil trial law matters within the three years immediately preceding application.

2. Recertification. Applicant must submit names of persons with whom he or she has had dealings involving civil trial law matters since certification or the most recent recertification.

3. Reference Types. Applicant must submit the following types of references:

a. Four Texas attorneys who are substantially involved in civil trial law. Applicant must have tried a civil trial law matter with or against one of these attorneys.

b. One judge of any court of record in Texas whom applicant has appeared before as an advocate in a civil trial law matter.

## TEXAS BOARD OF LEGAL SPECIALIZATION

### STANDARDS FOR ATTORNEY CERTIFICATION

#### PART II

#### SPECIFIC AREA REQUIREMENTS

These are specific requirements that apply the specialty area listed below. The specific requirements include the definitions, substantial involvement, reference, and other certification and recertification requirements for the specialty area. You will also need to refer to the Standards for Attorney Certification, Part I - General Requirements for requirements that apply to all specialty areas.

## SECTION V

### CIVIL TRIAL LAW

(Area ID: CT / Year Started: 1978)

#### A. DEFINITIONS.

1. Civil trial law is the practice of law dealing with litigation of civil controversies in all areas of substantive law before sState and fFederal courts of record.

2. A trial is a contested proceeding in a court of record within the judicial branch of government that ~~which~~ involves the submission of testimonial evidence to a court or jury in support or defense of claims for relief submitted by the parties. A trial ~~shall be deemed to have commenced~~ upon the initial presentation of evidence to the court or jury. ~~For purposes of this definition, a summary judgment proceeding or any other pre-trial proceeding does not constitute a trial. Summary judgment proceedings, other pretrial proceedings, default judgments, and civil appeals are not trials within the meaning of these standards.~~

3. Lead counsel is the lawyer who ~~in a jury case is the role in which an attorney~~ takes primary responsibility for the representation of the client in the case. In a jury case, to be considered lead counsel, applicant ~~must, at a minimum, have made an opening statement or closing argument and conducted significant direct or cross-examination of live witnesses at trial. during trial and whose activities in trial shall at a minimum include:~~

i. ~~conducting jury selection;~~

ii. ~~making an opening statement or making a closing argument; and~~

iii. ~~conducting significant direct or cross-examination of live witnesses at trial.~~

B. SUBSTANTIAL INVOLVEMENT. ~~To demonstrate Applicant must show~~ substantial involvement and special competence in Texas civil trial law practice, applicant ~~must, at a minimum, meet the following requirements. by providing such information as may be required by TBLS.~~

#### 1. Certification.

a. Percentage of Practice Requirement. Applicant must have devoted a minimum of 35% of his or her time practicing civil trial law in Texas during each year of the ~~3~~ three years immediately preceding the application as defined in Section V, A of the Specific Area Requirements for Civil Trial Law.

b. Task Requirements. Applicant must provide information as required by TBLS concerning specific tasks he or she has performed in Texas civil trial law. In evaluating experience, TBLS may take into consideration the nature, complexity, and duration of the tasks handled by applicant.

(1) Applicant must have tried ~~during his or her practice a minimum of at least 20~~ civil trials in a court of record in Texas ~~or in federal court that involving~~ an amount in controversy in excess of \$25,000 or ~~other~~ significant non-monetary claims. Of these trials;

i. ~~a~~At least ~~seven~~ 7 ~~shall must have been~~ be jury trials that were conducted by applicant as lead counsel and submitted to the jury; ~~trier of fact~~ in a court of record in Texas; and

ii. nNo more than 1/3 seven of the cases submitted by the applicant shall have been may be personal injury cases; and

iii. no more than 1/3 seven shall have been may be family law cases; and

iv. in at least five trials, applicant must have played a significant role in conducting jury selection.

(2) The following types of proceedings may be substituted for three of the other 13 civil trials.

i. A civil jury trial conducted by applicant as lead counsel in a state court of record outside of Texas, but within the United States, where the case was submitted to the jury for decision. The amount in controversy must have exceed \$25,000, or the case must have involved significant nonmonetary claims. Formal rules of evidence and procedure must have applied in the case.

ii. A civil trial conducted by applicant as lead counsel that concluded before submission to either a jury or the court (in a bench trial) in a court of record in Texas or in federal court. The trial must have concluded: (a) after voir dire, opening statements, and the examination of witnesses in a jury trial; or (b) after opening statements and the examination of witnesses in a bench trial. The amount in controversy must have exceeded \$25,000, or the case must have involved significant nonmonetary claims.

iii. An arbitration conducted to a final decision by applicant as lead counsel in which formal rules of evidence and procedure governed the proceeding. The amount in controversy must have exceeded \$25,000, or the case must have involved significant nonmonetary claims.

iv. A criminal jury trial conducted by applicant as lead counsel that resulted in a final verdict in a court of record in Texas or in federal court.

v. A contested administrative proceeding conducted by applicant as lead counsel for a party before a Texas or federal agency. The matter must have been resolved after a hearing on the merits in which witnesses were examined by direct and cross-examination, and a final order must have been issued by the agency. The amount in controversy must have exceeded \$25,000, or the case must have involved significant nonmonetary claims.

vi. A temporary or preliminary injunction hearing conducted by applicant as lead counsel that resulted in a final decision on the temporary or preliminary injunction request. In the hearing, applicant must have presented an opening and closing statement and conducted live direct and cross-examination of witnesses. The amount in controversy must have exceeded \$25,000, or the case must have involved significant nonmonetary claims.

2. Recertification. Applicant must have devoted a minimum of 35% of his or her time practicing civil trial law in Texas during each year of the five 5 year period of certification as defined in Section V, A of the Specific Area Requirements for Civil Trial Law except as provided for unless applicant meets the exception in Part I - General Requirements, Section VI, C,1(b).

C. REFERENCE REQUIREMENTS. Applicant must submit a minimum of five 5 names and addresses of persons to be contacted as references to attest to his or her competence in civil trial law. These persons must be substantially involved in civil trial law; and be familiar with applicant's civil trial law practice.

1. Certification. Applicant must submit names of persons with whom he or she has had dealings involving civil trial law matters within the three 3 years immediately preceding application.

2. Recertification. Applicant must submit names of persons with whom he or she has had dealings involving civil trial law matters since certification or the most recent recertification.

3. Reference Types. Applicant must submit the following types of references:

a. Four Texas attorneys who are substantially involved in civil trial law. Applicant must have tried a civil trial law matter with or against one of these attorneys.

b. One judge of any court of record in Texas whom applicant has appeared before as an advocate in a civil trial law matter.

TRD-201601399  
Martha Newton  
Rules Attorney  
Supreme Court of Texas  
Filed: March 24, 2016



In the Supreme Court of Texas

Misc. Docket No. 16-9037

**ORDER ADOPTING RULE 14 OF THE RULES OF JUDICIAL ADMINISTRATION**

**ORDERED** that:

1. The Court adopts Rule 14 of the Rules of Judicial Administration. See Acts 2015, 84th Leg., R.S., ch. 186 (S.B. 455) (codified at TEX. GOV'T CODE §22A.001 *et seq.*); TEX. GOV'T CODE §74.024. The rule applies to cases that are filed or pending in the trial court on or after the date of this order.

2. Any person may submit written comments to Rules Attorney Martha Newton at [rulescomments@txcourts.gov](mailto:rulescomments@txcourts.gov). The Court requests that comments be submitted by August 31, 2016.

3. The Clerk is directed to:

- a. file a copy of this order with the Secretary of State;
- b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
- c. send a copy of this order to each elected member of the Legislature; and
- d. submit a copy of the order for publication in the *Texas Register*.

Dated: March 22, 2016.

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Nathan L. Hecht, Chief Justice

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Paul W. Green, Justice

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Phil Johnson, Justice

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Don R. Willett, Justice

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Eva M. Guzman, Justice

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Debra H. Lehrmann, Justice

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Jeffrey S. Boyd, Justice

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John P. Devine, Justice

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Jeffrey V. Brown, Justice

## **Rule 14. Special Three-Judge District Court**

### **14.1 Applicability**

This rule applies to cases filed in a district court in this state in which the state or a state officer or agency is a defendant in a claim that:

- (a) challenges the finances or operations of this state's public school system; or
- (b) involves the apportionment of districts for the house of representatives, the senate, the State Board of Education, or the United States Congress, or state judicial districts.

### **14.2 Procedure for Initiating the Creation of a Special Three-Judge District Court**

(a) The attorney general may petition the Chief Justice to convene a special three-judge district court in any case to which this rule applies. The petition must be submitted to the Supreme Court clerk for presentation to the Chief Justice. A copy must be filed in the district court in which the case is pending and served on all parties to the case.

(b) The petition must:

- (1) list all parties and counsel and complete contact information for all counsel;
  - (2) state the cause number and style of the case, the district court in which it is pending, and the name of the judge to whom it is assigned;
  - (3) state concisely whether the case falls under Rule 14.1(a) or (b);
  - (4) summarize the dispute and all claims asserted against the state or a state officer or agency;
  - (5) include a certificate of service that complies with Texas Rule of Appellate Procedure 9.5; and
  - (6) include as appendices the live pleadings on file and a copy of the district court's docket sheet for the case.
- (c) Any party may submit a response to the petition within seven days of the date that the petition is filed in the district court. The Chief Justice may shorten the time for submitting a response.
- (d) The filing of a petition under this rule stays all proceedings in the district court until the Chief Justice acts on the petition.

### **14.3 Action on Petition; Composition of the Special Three-Judge District Court**

(a) If a petition establishes the applicability of this rule, the Chief Justice will grant the petition, order the creation of a special three-judge district court, and appoint three persons to serve on the court.

(b) The special three-judge district court will be composed of:

- (1) the district judge of the judicial district to which the original case was assigned;
- (2) one district judge of a judicial district other than a judicial district in the same county as the judicial district to which the original case was assigned; and

(3) one justice of a court of appeals who serves a court of appeals district:

(A) different from the district in which the original case was assigned; and

(B) different from the district in which the district judge appointed under (b)(2) sits.

(c) The Chief Justice will designate the presiding judge of the special three-judge district court.

(d) A judge or justice appointed under (b)(2) or (3) must have been elected to that office and may not be serving an appointed term of office.

### **14.4 Location of Special Three-Judge District Court; Governing Rules**

(a) A special three-judge district court convened under this rule must conduct the trial and all hearings in the district in which the case was filed and may use the courtroom, other facilities, and administrative support of the original district court.

(b) Except as provided by this rule or Chapter 22A, Government Code, the Texas Rules of Civil Procedure and all other statutes and rules applicable to civil litigation in a district court in this state apply to proceedings before a special three-judge district court.

### **14.5 Actions by Judge or Justice Serving on a Special Three-Judge District Court**

(a) With the unanimous consent of the three judges sitting on a special three-judge district court, a judge or justice of the court may:

- (1) independently conduct pretrial proceedings; and
- (2) sign interlocutory orders before trial.

(b) A judge or justice of a special three-judge district court may not independently order a temporary restraining order, temporary injunction, or an order that finally disposes of a claim before the court.

(c) Any independent action taken by one judge or justice of a special three-judge district court related to a claim before the court may be reviewed by the entire court at any time before final judgment.

### **14.6 Transfer and Consolidation of Related Cases**

(a) "Related case" means any case in which the state or a state officer or agency is a defendant that arises from the same nucleus of operative facts as the case before a special three-judge district court, regardless of the legal claims or causes of action asserted in the related case.

(b) On the motion of any party to a case assigned to a special three-judge district court, the special three-judge district court must transfer a related case to itself and consolidate the related case with the case before the court. The special three-judge district court may transfer a related case without the consent of the parties to the related case or of the court in which the related case is pending.

(c) The motion must be in writing and include:

- (1) the cause number, style, court, and name of the judge of the court in which the related case is pending;
- (2) a list of parties and counsel in the related case and complete contact information for all counsel;
- (3) a demonstration that the related case arises from the same nucleus of operative facts as the case before the special three-judge district court;
- (4) the live pleadings on file in the related case; and
- (5) a certificate of service on all parties to the case pending before the special three-judge district court and to the related case.

(d) After a motion to transfer and consolidate a related case is filed, the special three-judge district court or the court in the related case may stay the proceedings in the case before it until the special three-judge district court has ruled on the motion.

#### 14.7 Appeals and Original Proceedings

An appeal from an appealable interlocutory order or from a final judgment of a special three-judge district court is to the Supreme Court under Texas Rule of Appellate Procedure 57. An original appellate proceeding seeking extraordinary relief from an action taken by the special three-judge district court must be filed directly in the Supreme Court under Texas Rule of Appellate Procedure 52.

TRD-201601400

Martha Newton

Rules Attorney

Supreme Court of Texas

Filed: March 24, 2016



### Workforce Solutions for the Heart of Texas

Request for Proposal (RFP #13160101)

The Heart of Texas Workforce Development Board, Inc. (dba Workforce Solutions for the Heart of Texas) is soliciting proposals for Workforce Innovation and Opportunity Act (WIOA) Youth Services.

Workforce Solutions for the Heart of Texas is the administrative entity for programs funded by the Texas Workforce Commission and the Department of Labor and serves the counties of Bosque, Falls, Freestone, Hill, Limestone, and McLennan.

The initial contract period will begin on July 1, 2016. Eligible service providers must have extensive knowledge and experience including

a successful track record in youth workforce development programs, state and federal laws and statutes.

The Request for Proposal (RFP) may be obtained by contacting Margie Cintron at (254) 855-6543 or by e-mail at [jcintron@grandecom.net](mailto:jcintron@grandecom.net). The RFP is also available on the Workforce Solutions for the Heart of Texas website at [www.hotworkforce.com](http://www.hotworkforce.com). A Bidders' Conference will be held on Tuesday, April 5, 2016, at 1:00 p.m. at the McLennan County Workforce Solutions Center located at 1416 S. New Road, Waco, Texas 76711. Attendance is not mandatory, but strongly recommended.

Proposals are due no later than 4:00 p.m. (CST) Monday, April 25, 2016, via mail, hand-delivery or courier delivery to:

Workforce Solutions for the Heart of Texas

Attn: Margie Cintron

801 Washington Avenue, Suite 700

Waco, Texas 76701

The Heart of Texas Workforce Board, Inc. is an equal opportunity employer/programs and auxiliary aids and services are available upon request to include individuals with disabilities. TTY/TDD via RELAY Texas service at 711 or (TDD) 1-800-735-2989/1-800-735-2988 (voice).

TRD-201601381

Anthony Billings

Executive Director

Workforce Solutions for the Heart of Texas

Filed: March 23, 2016



## How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules**- sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules**- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 40 (2015) is cited as follows: 40 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "40 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 40 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION

#### Part 4. Office of the Secretary of State

##### Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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