

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 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 392. PURCHASE OF GOODS AND SERVICES FOR SPECIFIC HEALTH AND HUMAN SERVICES COMMISSION PROGRAMS SUBCHAPTER J. INDEPENDENT LIVING SERVICES PROGRAM CONTRACTS

1 TAC §392.901

The Texas Health and Human Services Commission (HHSC) proposes new Subchapter J, Independent Living Services Program Contracts, including new §392.901, concerning Independent Living Services Program Contracts.

BACKGROUND AND JUSTIFICATION

Proposed new §392.901 implements provisions of House Bill 2463, 84th Legislature, Regular Session, 2015, effective September 1, 2015. Texas Human Resource Code §117.080(e)(2) - (5), created by House Bill 2463, requires the adoption of rules relating to Independent Living Services (ILS) Program contracts.

SECTION-BY-SECTION SUMMARY

Proposed new §392.901(a) defines terms used in this section.

Proposed new §392.901(b) describes the types of contracts to which this section applies.

Proposed new §392.901(c) describes the factors HHSC considers in awarding a contract for independent living services to a center for independent living.

Proposed new §392.901(d) describes the factors HHSC considers in awarding a contract for independent living services to an entity other than center for independent living.

Proposed new §392.901(e) describes the factors a center for independent living must consider when contracting with another entity to provide independent living services.

Proposed new §392.901(f) describes how HHSC monitors the contracts described in this section.

Proposed new §392.901(g) describes the contract monitoring that centers for independent living must undertake.

FISCAL NOTE

Rebecca Trevino, Deputy Chief Financial Officer for the Health and Human Services Commission, has determined that for each

year of the first five years the proposed rule is in effect, there will be no fiscal impact to state government. Costs and revenues of local governments will not be affected.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Trevino has also determined that there will be no adverse economic effect on small businesses or micro businesses to comply with the proposed rule, as they will not be required to alter their business practices as a result of the proposed rule.

PUBLIC BENEFIT AND COST

Nancy Walker, Special Advisor to the Executive Commissioner, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit is the adequate description of the requirements for independent living services program contracts.

Ms. Trevino has determined that there are no probable economic costs to persons who are required to comply with the proposed rule.

HHSC has determined that the proposed rule will not affect a local economy. There is no anticipated negative impact on local employment.

REGULATORY ANALYSIS

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "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

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Amy Chandler, Program Specialist, by mail to P.O. Box 13247, MC H600, Austin, Texas 78711; or by e-mail to amy.chandler@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

STATUTORY AUTHORITY

The proposed new rule is authorized by the Texas Human Resources Code Chapter 117 and implements §117.080. The new rule is proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation of and provision of health and human services by the health and human services agencies.

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

§392.901. Independent Living Services Program Contracts.

(a) The following words and terms, when used in this section, have the following meanings:

(1) CIL--A center for independent living as defined under Texas Human Resources Code §117.001(1-a).

(2) HHSC--The Texas Health and Human Services Commission or its designee.

(3) Program--The independent living services program pursuant to Texas Human Resources Code §117.079.

(b) This section applies to independent living services contracts, whether by grant or other form of agreement, under the Program.

(c) In contracting with a CIL to provide independent living services under the Program, HHSC considers, as applicable:

(1) governing law, rules, and regulations;

(2) the CIL's ability to provide the services sought to be contracted;

(3) the CIL's performance monitoring data generated pursuant to Texas Human Resources Code §117.080(d);

(4) any of the CIL's subcontractors performing services under the Program; and

(5) any other factors that HHSC determines necessary or reasonable.

(d) In contracting with organizations or other persons that are not CILs to provide independent living services under the Program, HHSC considers, as applicable:

(1) governing law, rules, and regulations;

(2) the organization's or other person's ability to provide the services sought to be contracted;

(3) the organization's or other person's performance monitoring data generated under the Program; and

(4) any other factors that HHSC determines necessary or reasonable.

(e) In contracting with organizations and other persons to provide independent living services under the Program, CILs must consider:

(1) governing law, rules, and regulations; and

(2) other factors that HHSC determines necessary or reasonable.

(f) HHSC monitors contracts with CILs and organizations or other persons that provide independent living services through contracts with HHSC under the Program in accordance with HHSC's contract management handbook published pursuant to Texas Government Code §2261.256.

(g) Each CIL that contracts with organizations or other persons to provide independent living services under the Program is required to monitor its contracts. Each CIL must also report subcontract performance data to HHSC, as required by its contract. Contract monitoring under this subsection is subject to review by HHSC in performance monitoring pursuant to Texas Human Resources Code §117.080(d).

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 June 13, 2016.

TRD-201602954

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 24, 2016

For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER A. GENERAL QUARANTINE PROVISIONS

The Texas Department of Agriculture (the Department) proposes the repeal of Title 4, Chapter 19, Subchapter A, §19.3, concerning inspection and testing fees, and proposes new §19.3, relating to inspection and testing fees. The rule is repealed and proposed as new to make the rule more concise and easy to read. The proposal is made in order to comply with Legislative cost recovery requirements. The Legislature has required that the Department set fees for a program in an amount which offsets, when feasible, the direct and indirect costs of administering its regulatory activities related to the program and has authorized the agency to collect fees accordingly. In order to meet Legislative goals, the Department has reviewed programs for cost savings and efficiencies, and then restructured programs, as needed, to provide the best service possible at a reasonable and feasible cost to the regulated industry.

The proposed rule will feasibly offset the direct and indirect costs of administering regulatory activities as required by the Texas Agriculture Code, §12.0144, for inspection and testing related to noxious and invasive pests. The ability of the Department to meet cost recovery requirements and continue to operate an effective consumer protection program will be impacted if the Department does not assess a fee that recovers the full cost of the program.

Dale Scott, Director of Environmental & Biosecurity Programs, has determined that for the first five-year period the proposed rule is in effect, there will be no additional cost implications for state government; however, there will be an estimated increase in state revenue of \$256,325 annually. There is no anticipated fiscal impact for local governments as a result of administering or enforcing the rule, as proposed.

Mr. Scott has also determined that for each year of the first five years the proposed rule is in effect, the anticipated public benefit will be achieving effective recovery of costs related to administration of the plant quality program, thereby allowing the Department to continue to provide phytosanitary certification services and increased consumer protection. The anticipated costs to micro-businesses, small businesses or individuals required to comply with the rule would be a fee increase per phytosanitary or growing season inspection conducted or sample submitted for laboratory analysis. Increased costs to most entities will be based on the number of samples required to be collected, the number of fields and acres requested to be inspected, or the number of shipments requested to be inspected for export. Businesses requesting state phytosanitary inspections and certificates may be able to minimize their overall phytosanitary costs through the use of an alternative self-certification method by entering into a compliance agreement with the Department. Since the use of compliance agreement certification is not accepted by all destination states, affected businesses should contact the Texas Department of Agriculture to obtain further information about the compliance certification program.

Comments on the proposal may be submitted to Dale Scott, Director of Environmental & Biosecurity Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711 or by email at rulecomments@texasagriculture.gov. Comments must be received no later than 30 days from the date of publication on the proposal in the *Texas Register*.

4 TAC §19.3

The proposal is made under §12.021 of the Texas Agriculture Code, which authorizes the Department to collect fees for phytosanitary inspections and issue certificates upon completion.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§19.3. *Inspection and Testing Fees.*

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 June 13, 2016.

TRD-201602987

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: July 24, 2016

For further information, please call: (512) 463-4075



4 TAC §19.3

The proposal is made under §12.021 of the Texas Agriculture Code, which authorizes the Department to collect fees for phytosanitary inspections and issue certificates upon completion.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§19.3. *Inspection and Testing Fees.*

(a) The department shall collect an inspection fee of \$35 for the issuance of each state phytosanitary growing season inspection certificate. Fields designated for genetic identity by the department are exempt from the fee.

(b) The department shall collect an inspection fee of \$35 for each on-site visit conducted and shall manually issue a state phytosanitary certificate upon completion. Additional certificates may be issued during the same on-site visit for a fee of \$35 per manually issued certificate, or \$10 per certificate using USDA's Phytosanitary Certificate Issuance and Tracking System.

(c) The department shall collect the same amount of certification and administrative fees as established by U.S. Department of Agriculture to issue federal phytosanitary certificates. Information on federal phytosanitary certification fees can be obtained by contacting the department at 1-800 TELL-TDA (1-800-835-5832) or a local USDA Animal and Plant Health Inspection Service office.

(d) The department shall collect the following inspection fee for each acre of greenhouse grown or field grown vegetable plants for the issuance of a vegetable certificate:

(1) for the first five acres inspected in a field and greenhouse, \$10 for each acre; and

(2) \$2 for each additional acre.

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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For further information, please call: (512) 463-4705



CHAPTER 22. NURSERY PRODUCTS AND FLORAL ITEMS

4 TAC §22.3

The Texas Department of Agriculture (the Department) proposes amendments to Title 4, Part 1, Chapter 22, §22.3, concerning nursery/floral registration classifications and fees. These amendments are necessary to comply with Legislative cost recovery requirements. The Legislature has required that the Department set fees for a program in an amount which offsets, when feasible, the direct and indirect costs of administering its regulatory activities related to the program and has authorized the agency to collect fees accordingly. In order to meet this Legislative mandate, the Department has reviewed programs for cost savings and efficiencies, and then restructured programs, as needed, to provide the best service possible at a reasonable and feasible cost to the regulated industry.

The amendments will feasibly offset the direct and indirect costs of administering regulatory activities as required by the Texas Agriculture Code, §12.0144, for the registration of nursery/floral licenses. There have been no nursery/floral registration fee changes since 2003.

Dale Scott, Director of Environmental & Biosecurity Programs, has determined that for the first five-year period the proposed amendments are in effect, there will be no additional fiscal implications for state government in the management of this program; however, there will be an estimated increase in state revenue of \$1,754,205 annually. While the Department continually reviews

processes and systems to ensure it operates in the most cost effective manner possible, the charging of fees is necessary to generate revenue to completely offset costs of operation. The ability to operate the program will be impacted if the Department does not assess a fee that recovers the full cost of the program. There is no anticipated fiscal impact for local governments as a result of administering or enforcing the rule amendment, as proposed.

Mr. Scott has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be achieving recovery of the costs to effectively administering the plant quality program, thereby allowing the Department to provide increased and more widespread consumer protection. The anticipated costs to micro-businesses, small businesses or individuals required to comply with the amendments would be a fee increase per entity, with increased costs to most entities based on the class of the nursery operation.

Comments on the proposal may be submitted to Dale Scott, Director of Environmental & Biosecurity Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711 or by email to rulecomments@texasagriculture.gov. Comments must be received no later than 30 days from the date of publication on the proposal in the *Texas Register*.

The amendments are proposed under Texas Agriculture Code (the Code), §71.057, which provides that a nursery dealer or nursery agent must register with the Department under this section before offering for sale or lease or otherwise distributing a nursery product, and that a nursery dealer or nursery agent may apply for registration or renewal of registration by submitting an application prescribed by the department and an annual fee; and §12.016 of the Code, which provides the Department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The code affected by the proposal is Chapter 71 of the Texas Agriculture Code.

§22.3. *Nursery/Floral Registration Classifications and Fees.*

(a) Registration and renewal fees are:

(1) Class 1--\$110 [\$75]. Includes businesses that sell, lease, or distribute, but do not grow nursery products and/or floral items, such as garden centers, grocery stores, landscape contractors, floral shops, interior decorators, and street vendors.

(2) Class 2--\$155 [\$140]. Includes permanently located businesses that sell, lease, or distribute, nursery products and/or floral items and have a growing area of 435,600 square feet (ten acres) or less.

(3) Class 3--\$190 [\$145]. Includes permanently located businesses that sell, lease, or distribute, nursery products and/or floral items and have a growing area of 435,601-871,200 square feet (in excess of ten acres to twenty acres).

(4) Class 4--\$230 [\$180]. Includes permanently located businesses that sell, lease, or distribute nursery products and/or floral items and have a growing area of 871,201 square feet or more (over twenty acres).

(5) Class M--\$215 [\$180]. Includes businesses that sell, lease, or distribute nursery products and/or floral items at temporary markets such as flea markets, arts and craft shows, plant or flower shows, or other temporary markets other than that described in subsection (c) of this section. Class M registrants must obtain an event permit for each day nursery products and/or floral items are sold. Thirty event

permits are provided at no additional cost under this registration. One event permit equals one day (or any portion of a 24 hour period) at one location. Selling nursery products and/or floral items for any portion of a 24-hour period constitutes the use of one event permit. Additional event permits may be purchased in blocks of 10 permits at a cost of \$50 per block. There will be no limit on the number of blocks that can be purchased.

(b) - (d) (No change.)

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

Filed with the Office of the Secretary of State on June 13, 2016

TRD-201602973

Jessica Escobar

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For further information, please call: (512) 463-4075



TITLE 7. BANKING AND SECURITIES

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 11. MISCELLANEOUS

SUBCHAPTER A. GENERAL

7 TAC §11.37

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes amendment to §11.37, concerning the form of consumer complaint notices. The proposed amendment concerns subsection (b). The amended rule is proposed to allow consumer complaint notices to be in a form that is substantially similar to the current required notice.

Currently, §11.37(b) provides a form consumer complaint notice that must be duplicated exactly when the notice is required to be communicated to consumers. Proposed amended §11.37(b) would state that this consumer complaint notice must only substantially conform to the form complaint notice that is currently provided by §11.37(b). This will allow an entity that is required to communicate the notice to make non-substantive changes to the notice, as might be necessary by the context or formatting in which it is being provided.

Deputy Commissioner Robert L. Bacon, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Mr. Bacon also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is that the notices provided to consumers may be made clearer and more consistent with the context of the notice.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed amended rule must be submitted no later than 5:00 p.m. on July 25, 2016. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amended rule is proposed under Finance Code §11.003, which provides that the commission may adopt rules necessary and reasonable to implement Chapter 11 of the Finance Code.

Finance Code §11.307 is affected by the proposed amended section.

§11.37. How Do I Provide Information to Consumers on How to File a Complaint?

(a) (No change.)

(b) How do I provide notice of how to file complaints?

(1) You must use a notice that substantially conforms to the language and form of the following notice in order to let your consumers know how to file complaints: The (your name) is (chartered, licensed, or registered) under the laws of the State of Texas and by state law is subject to regulatory oversight by the Texas Department of Banking. Any consumer wishing to file a complaint against the (your name) should contact the Texas Department of Banking through one of the means indicated below: In Person or U.S. Mail: 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294, Telephone No.: (877) 276-5554, Fax No.: (512) 475-1313, email [~~E-mail~~]: consumer.complaints@dob.texas.gov, Website: www.dob.texas.gov.

(2) - (5) (No change.)

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

Filed with the Office of the Secretary of State on June 10, 2016.

TRD-201602934

Catherine Reyer

General Counsel

Texas Department of Banking

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For further information, please call: (512) 475-1301



PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 83. REGULATED LENDERS AND CREDIT ACCESS BUSINESSES

SUBCHAPTER A. RULES FOR REGULATED LENDERS

The Finance Commission of Texas (commission) proposes amendments to §§83.102, 83.301, 83.302, 83.304, 83.306, 83.310, 83.403, and 83.828; proposes new §83.303 and §83.404; and proposes the repeal of §§83.303, 83.404, and 83.405 in 7 TAC Chapter 83, Subchapter A, concerning Rules for Regulated Lenders.

In general, the purpose of the rule changes in 7 TAC Chapter 83, Subchapter A is to update rules regarding the licensing of regulated lenders, and to make technical corrections. The proposed rule changes relate to the following issues: contact information, transfers, criminal history review, definitions, and recordkeeping. Additionally, certain sections are being proposed for repeal in order to replace them with new, reorganized rules.

The agency circulated an early draft of proposed changes to interested stakeholders. The agency then held a stakeholders meeting where attendees provided oral precomments. In addition, the agency received one informal written precomment. Certain concepts recommended by the precommenter have been incorporated into this proposal, and the agency appreciates the thoughtful input provided by stakeholders.

The individual purposes of the proposed changes to each section are provided in the following paragraphs.

In §83.102(3), the definition of "amount financed" is proposed to be replaced with a reference to Regulation Z, 12 C.F.R. §1026.18(b). The current rule contains a specific definition of "amount financed" that applies only to rule provisions on computing earnings, deferrals, maximum charges, and refunds of unearned interest. The current rules on these issues do not use the term "amount financed," so the specific definition is unnecessary. However, other rules throughout Chapter 83 use the term "amount financed" to refer to the amount calculated under Regulation Z. For this reason, the proposed amendment replaces the current definition with a reference to Regulation Z.

A proposed amendment to §83.301(2)(A) amends the definition of "principal party" for sole proprietorships. The amendment removes the statement that proprietors include spouses with a community property interest. In addition, an amendment to §83.302(1)(B)(i) removes the requirement to disclose community property interests and documentation regarding separate property status, and replaces it with a requirement to disclose the names of the spouses of principal parties if requested. The agency currently spends considerable time requesting information from license applicants to determine the status of spouses' property interests, and explaining these concepts to applicants. These amendments will help streamline the licensing process and reduce regulatory burden. The amendments will also make the application process simpler and more straightforward for applicants. In specific cases where the spouse is a principal party, the OCCC would be able to request additional information about the spouse under current §83.302(1)(E) - (F).

Section 83.303 is proposed for repeal and replacement with a new rule, with the intent to clarify the requirements when a licensee transfers ownership. Currently, §83.303 describes what constitutes a transfer of ownership requiring the filing of a transfer application. The proposed new rule largely maintains the requirements under the current rule, but it provides two different paths the transferee can take for a transfer of ownership: either an application to transfer the license, or a new license application on transfer of ownership. The amendments outline what the application has to include, the timing requirements, and which parties are responsible at different points in the transfer process. Subsection (a) describes the purpose of the new section. Subsection (b) defines terms used throughout the subsection. In particular, subsection (b)(3) defines the phrase "transfer of ownership," listing different types of changes in acquisition or control of the licensed entity. The precommenter recommends that this definition specify that a transfer of ownership does not include a relocation of regulated transactions from one licensed location

to another. Relocations of regulated transactions are governed by current §83.308(c), which requires licensees to notify debtors that the transactions have been relocated. In response to this recommendation, proposed §83.303(b)(3) states that a transfer of ownership does not include a relocation of regulated transactions from one licensed location to another licensed location.

Subsection (c) specifies that a license may not be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §342.163. Subsection (d) provides a timing requirement, stating that a complete license transfer application or new license application on transfer of ownership must be filed no later than 30 days after the transfer of ownership. Subsection (e) outlines the requirements for the license transfer application or new license application on transfer of ownership. These requirements include complete documentation of the transfer of ownership, as well as a complete license application for transferees that do not hold an existing regulated lender license. Subsection (e)(5) explains that the application may include a request for permission to operate.

Subsection (f) provides that the OCCC may issue a permission to operate to the transferee. A permission to operate is a temporary authorization from the OCCC allowing a transferee to operate while final approval is pending for an application. Subsection (g) specifies the transferee's authority to engage in business if the transferee has filed a complete application including a request for permission to operate. It also requires the transferee to immediately cease doing business if the OCCC denies the request for permission to operate or denies the application.

Subsection (h) describes the situations where the transferor is responsible for business activity at the licensed location, situations where the transferee is responsible, and situations where both parties are responsible. In this subsection, the precommenter makes the following recommendations. First, the precommenter recommends against using the phrase "joint and several responsibility," because the precommenter believes that this phrase could lead to confusion. Second, the precommenter recommends against drafting the subsection's paragraphs so that they overlap with each other. Third, the precommenter recommends that this subsection consist of two paragraphs (one for the transferor's responsibility and one for the transferee's responsibility), for the sake of clarity. In response to these recommendations, the three paragraphs in proposed subsection (h) apply to three distinct periods of time: (1) the period before the transferee begins conducting business (when the transferor is responsible), (2) the period after the transferee begins conducting business and before final approval of the application (when the transferor and transferee are each responsible), and (3) the period after final approval (when the transferee is responsible). For the second period, proposed subsection (h)(2) specifies that the transferor and transferee are each responsible. The agency believes that is appropriate for the rule to specify that the transferor and transferee are each responsible during this period, which includes any activity performed by the transferee under a permission to operate. In this way, the rule helps ensure that licensees are aware of their responsibilities. The proposed rule's statement that the transferor is responsible for acts performed during a permission to operate is consistent with the current rule at §83.303(d), which states: "The transferor must accept full responsibility to any customer and to the OCCC for the licensed business for any acts of the transferee in connection with the operation of the lending business." The permission to operate is a temporary authorization allowing a transferee to operate under a trans-

feror's license while the transferee's application is pending. The OCCC allows the permission-to-operate procedure in order to accommodate transferees that wish to begin doing business after a routine transfer of ownership but before approval of a license application. The alternative would be to prohibit the transferee from engaging in business until after the license application is approved. If a transferor wishes to protect itself from responsibility for the transferee's acts, then the transferor can delay the transfer of ownership until the transferee's application is approved. Alternatively, the transferor can enter an indemnification agreement with the transferee, under which the transferee must reimburse the transferor for losses resulting from the transferee's acts.

In §83.304, concerning Change in Form or Proportionate Ownership, conforming changes are proposed corresponding to proposed new §83.303. Throughout subsections (b) and (c), references have been added to the second path a transferee may take, i.e., a new license application on transfer of ownership.

Proposed amendments to §83.306 clarify the circumstances in which a licensee must notify the OCCC of changes to information in the original license application. The amendments specify that the requirement to provide updated information within 10 days applies before a license application is approved. Proposed new §83.306(b) provides that a licensee must notify the OCCC within 30 days if the information relates to the names of principal parties, criminal history, regulatory actions, or court judgments. Proposed new §83.306(c) specifies that each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, and that it is a best practice for licensees to regularly review contact information.

A proposed amendment to §83.310(c) provides that a license applicant must pay a fee to a party designated by the Texas Department of Public Safety (DPS) for processing fingerprints, replacing a statement that the fee will be paid to the OCCC. This amendment conforms the rule to the method by which applicants currently provide fingerprint information through DPS's Fingerprint Applicant Services of Texas (FAST) program. Proposed amendments to §83.310(d) conform the rule to proposed new §83.303 and add numbered paragraphs for clarity.

Proposed amendments to §83.403 clarify the agency's procedure for providing delinquency notices to licensees that have failed to pay an annual assessment fee. The amendments specify that notice of delinquency is considered to be given when the OCCC sends the notice by mail to the address on file with the OCCC as a master file address, or by e-mail to the address on file with the OCCC (if the licensee has provided an e-mail address).

Proposed new §83.404 specifies the criminal history information collected by the OCCC, outlines factors the OCCC will consider when reviewing criminal history information, and describes grounds for denial, suspension, and revocation of a regulated lender license. This section would replace the current §83.404 and §83.405, which are proposed for repeal. Subsection (a) describes the OCCC's collection of criminal history record information from law enforcement agencies. Subsection (b) identifies the criminal history information that the applicant must disclose. Subsection (c) describes the OCCC's denial, suspension, and revocation based on crimes that are directly related to the licensed occupation of regulated lender. Subsection (c)(1) lists the types of crimes that the OCCC considers to directly relate to the duties and responsibilities of being a regulated lender, including the reasons the crimes relate to the occupation, as provided

by Texas Occupations Code, §53.025(a). Subsection (c)(2) contains the factors the OCCC will consider in determining whether a criminal offense directly relates to the duties and responsibilities of a licensee, as provided by Texas Occupations Code, §53.022. Subsection (c)(3) provides the mitigating factors the OCCC will consider to determine whether a conviction renders an applicant or licensee unfit, as provided by Texas Occupations Code, §53.023. Subsection (d) describes the OCCC's authority to deny a license application if it does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §342.104(a). Subsection (e) explains that the OCCC will revoke a license on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b). Subsection (f) identifies other grounds for denial, suspension, or revocation, including convictions for specific offenses described by statutory provisions cited in the rule.

A proposed amendment to the recordkeeping rule in §83.828(10)(A) lists documentation and disclosures required under the Department of Defense's Military Lending Act Rule, 32 C.F.R. pt. 232. The Department of Defense's recently adopted amendments to the rule have a required compliance date of October 3, 2016. Under the amended Military Lending Act Rule, lenders will generally be required to provide model disclosures to covered military borrowers. 32 C.F.R. §232.6. The amended rule also specifies documentation that lenders can obtain in order to determine whether a consumer is a covered military borrower. 32 C.F.R. §232.5. The proposed amendments to §83.828(10)(A) specify that licensees are required to maintain these documents and disclosures in the individual borrower's loan file. This file must be maintained for four years from the date of the loan, or two years from the date of the final account entry, whichever is later, under current §83.828(14). However, licensees may keep the documents for a longer period of time if they choose. Additionally, a proposed amendment to the recordkeeping rule in §83.828(10)(C) updates a reference to the Texas Department of Public Safety "Driver's Crash Report" form.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments, new rules, and repeals are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn also has determined that for each year of the first five years the amendments, new rules, and repeals are in effect, the public benefit anticipated as a result of the rule changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules, and will be more easily enforced. In particular, the rules being repealed and replaced with new, reorganized rules will provide more guidance and clarity to regulated lender licensees.

There is no anticipated cost to persons who are required to comply with the rule changes as proposed. The Department of Defense's Military Lending Act Rule requires lenders to provide the disclosures described in the proposed amendments to §83.828. Any costs of complying with the proposed amendments to §83.828 are imposed by federal law, and are not imposed by the proposed amendments.

There is no anticipated adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the rule changes as proposed.

Comments on the proposal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

DIVISION 1. GENERAL PROVISIONS

7 TAC §83.102

The rule changes are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 342.

§83.102. Definitions.

Words and terms used in this subchapter that are defined in Texas Finance Code, Chapter 342 have the same meanings as defined in Chapter 342. The following words and terms, when used in this subchapter, will have the following meanings, unless the context clearly indicates otherwise.

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

(3) Amount financed--The amount calculated in accordance with Regulation Z, 12 C.F.R. §1026.18(b). [~~of money which is used, forborne, or detained and upon which interest is charged. The cash advance plus any other amounts that are financed by the creditor are included. Any points or other prepaid finance charges, excluding the administrative loan fee, that are not paid at closing and that are financed as part of the transaction are included in the amount financed. This definition is only applicable for the purposes of this subchapter for computing earnings, deferments, maximum charges, and determining refunds of unearned interest. It is not intended to be synonymous with the similar term that is used in the Truth in Lending Act (15 U.S.C. §§1601 - 1667f).~~]

(4) - (30) (No change.)

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

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Leslie L. Pettijohn
Commissioner

Office of Consumer Credit Commissioner

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For further information, please call: (512) 936-7621



DIVISION 3. APPLICATION PROCEDURES

7 TAC §§83.301 - 83.304, 83.306, 83.310

The rule changes are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 342.

§83.301. Definitions.

Words and terms used in this subchapter that are defined in Texas Finance Code, Chapter 342, have the same meanings as defined in Chapter 342. The following words and terms, when used in this subchapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Principal party--An adult individual with a substantial relationship to the proposed lending business of the applicant. The following individuals are principal parties:

(A) a proprietor [proprietors, including spouses with community property interest];

(B) - (H) (No change.)

§83.302. Filing of New Application.

An application for issuance of a new regulated loan license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. Appropriate fees must be filed with the application and the application must include the following:

(1) Required application information. All questions must be answered.

(A) (No change.)

(B) Disclosure of Owners and Principal Parties.

(i) Proprietorships. The applicant must disclose the name of any individual holding an ownership interest in the business and the name of any individual [who owns and who is] responsible for operating the business. If requested, the applicant must also disclose the names of the spouses of these individuals. [All community property interests must also be disclosed. If the business interest is owned by a married individual as separate property, documentation establishing or confirming separate property status must be provided.]

(ii) - (vi) (No change.)

(C) - (K) (No change.)

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

§83.303. Transfer of License; New License Application on Transfer of Ownership.

(a) Purpose. This section describes the license application requirements when a licensed entity transfers its license or ownership of the entity. If a transfer of ownership occurs, the transferee must submit either a license transfer application or a new license application on transfer of ownership under this section.

(b) Definitions. The following words and terms, when used in this section, will have the following meanings:

(1) License transfer--A sale, assignment, or transfer of a regulated loan license.

(2) Permission to operate--A temporary authorization from the OCCC, allowing a transferee to operate under a transferor's license while final approval is pending for a license transfer application or a new license application on transfer of ownership.

(3) Transfer of ownership--Any purchase or acquisition of control of a licensed entity (including acquisition by gift, devise, or descent), or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs. The term does not include a change in proportionate ownership as defined in §83.304 of this title (relating to Change in Form or Proportionate Ownership) or a relocation of regulated transactions from one licensed location to another licensed location, as described by §83.308(c) of this title (relating to Relocation). Transfer of ownership includes the following:

(A) an existing owner of a sole proprietorship relinquishes that owner's entire interest in a license or an entirely new entity has obtained an ownership interest in a sole proprietorship license;

(B) any purchase or acquisition of control of a licensed general partnership, in which a partner relinquishes that owner's entire interest or a new general partner obtains an ownership interest;

(C) any change in ownership of a licensed limited partnership interest in which:

(i) a limited partner owning 10% or more relinquishes that owner's entire interest;

(ii) a new limited partner obtains an ownership interest of 10% or more;

(iii) a general partner relinquishes that owner's entire interest; or

(iv) a new general partner obtains an ownership interest (transfer of ownership occurs regardless of the percentage of ownership exchanged of the general partner);

(D) any change in ownership of a licensed corporation in which:

(i) a new stockholder obtains 10% or more of the outstanding voting stock in a privately held corporation;

(ii) an existing stockholder owning 10% or more relinquishes that owner's entire interest in a privately held corporation;

(iii) any purchase or acquisition of control of 51% or more of a company that is the parent or controlling stockholder of a licensed privately held corporation occurs; or

(iv) any stock ownership changes that result in a change of control (i.e., 51% or more) for a licensed publicly held corporation occur;

(E) any change in the membership interest of a licensed limited liability company:

(i) in which a new member obtains an ownership interest of 10% or more;

(ii) in which an existing member owning 10% or more relinquishes that member's entire interest; or

(iii) in which a purchase or acquisition of control of 51% or more of any company that is the parent or controlling member of a licensed limited liability company occurs;

(F) any transfer of a substantial portion of the assets of a licensed entity under which a new entity controls business at a licensed location; and

(G) any other purchase or acquisition of control of a licensed entity, or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs.

(4) Transferee--The entity that controls business at a licensed location after a transfer of ownership.

(5) Transferor--The licensed entity that controls business at a licensed location before a transfer of ownership.

(c) License transfer approval. No regulated loan license may be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §342.512. A license transfer is approved when the OCCC issues its final written approval of a license transfer application.

(d) Timing. No later than 30 days after the event of a transfer of ownership, the transferee must file a complete license transfer application or new license application on transfer of ownership in accordance with subsection (e). A transferee may file an application before this date.

(e) Application requirements.

(1) Generally. This subsection describes the application requirements for a license transfer application or a new license application on transfer of ownership. A transferee must submit the application in a format prescribed by the OCCC. The OCCC may accept prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. The transferee must pay appropriate fees in connection with the application.

(2) Documentation of transfer of ownership. The application must include documentation evidencing the transfer of ownership. The documentation should include one or more of the following:

(A) a copy of the asset purchase agreement when only the assets have been purchased;

(B) a copy of the purchase agreement or other evidence relating to the acquisition of the equity interest of a licensee that has been purchased or otherwise acquired;

(C) any document that transferred ownership by gift, devise, or descent, such as a probated will or a court order; or

(D) any other documentation evidencing the transfer event.

(3) Application information for new licensee. If the transferee does not hold a regulated loan license at the time of the application, then the application must include the information required for new license applications under §83.302 of this title (relating to Filing of New Application). The instructions in §83.302 of this title apply to these filings.

(4) Application information for transferee that holds a license. If the transferee holds a regulated loan license at the time of the application, then the application must include amendments to the transferee's original license application describing the information that is unique to the transfer event, including disclosure questions, owners and principal parties, and a new financial statement, as provided in §83.302 of this title. The instructions in §83.302 of this title apply to these filings. The responsible person at the new location must file a personal affidavit, personal questionnaire, and employment history, if not previously filed. Other information required by §83.302 of this ti-

tle need not be filed if the information on file with the OCCC is current and valid.

(5) Request for permission to operate. The application may include a request for permission to operate. The request must be in writing and signed by the transferor and transferee. The request must include all of the following:

(A) a statement by the transferor granting authority to the transferee to operate under the transferor's license while final approval of the application is pending;

(B) an acknowledgement that the transferor and transferee each accept responsibility to any consumer and to the OCCC for any acts performed under the license while the permission to operate is in effect; and

(C) if the application is a new license application on transfer of ownership, an acknowledgement that the transferor will immediately surrender or inactivate its license if the OCCC approves the application.

(f) Permission to operate. If the application described by subsection (e) includes a request for permission to operate and all required information, and the transferee has paid all fees required for the application, then the OCCC may issue a permission to operate to the transferee. A request for permission to operate may be denied even if the application contains all of the required information. The denial of a request for permission to operate does not create a right to a hearing. If the OCCC grants a permission to operate, the transferor must cease operating under the authority of the license. Two companies may not simultaneously operate under a single license. A permission to operate terminates if the OCCC denies an application described by subsection (e).

(g) Transferee's authority to engage in business. If a transferee has filed a complete application including a request for permission to operate as described by subsection (e), by the deadline described by subsection (d), then the transferee may engage in business as a regulated lender. However, the transferee must immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. If the OCCC denies the application, then the transferee has a right to a hearing on the denial, as provided by §83.307(d) of this title (relating to Processing of Application).

(h) Responsibility.

(1) Responsibility of transferor. Before the transferee begins performing regulated lender activity under a license, the transferor is responsible to any consumer and to the OCCC for all regulated lender activity performed under the license.

(2) Responsibility of transferor and transferee. If a transferee begins performing regulated lender activity under a license before the OCCC's final approval of an application described by subsection (e), then the transferor and transferee are each responsible to any consumer and to the OCCC for activity performed under the license during this period.

(3) Responsibility of transferee. After the OCCC's final approval of an application described by subsection (e), the transferee is responsible to any consumer and to the OCCC for all regulated lender activity performed under the license. The transferee is responsible for any transactions that it purchases from the transferor. In addition, if the transferee receives a license transfer, then the transferee's responsibility includes all activity performed under the license before the license transfer.

§83.304. Change in Form or Proportionate Ownership.

(a) (No change.)

(b) Merger. A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the filing of a license transfer application or a new license application on transfer of ownership pursuant to §83.303 of this title (relating to Transfer of License; New License Application on Transfer of Ownership). If the merger of the parent entity of a licensee that leads to the creation of a new entity or results in a different surviving parent entity, the licensee must advise the OCCC in writing of the change within 14 calendar days by filing a license amendment and paying the required fees as provided in §83.310 of this title. Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 14 calendar days.

(c) Proportionate ownership.

(1) A change in proportionate ownership that results in the exact same owners still owning the business, and does not meet the requirements described in paragraph (2) of this subsection, does not require a transfer. Such a proportionate change in ownership does not require the filing of a license transfer application or a new license application on transfer of ownership, but does require notification when the cumulative ownership change to a single entity or individual amounts to 5% or greater. No later than 14 calendar days following the actual change, the licensee is required to notify the OCCC in writing of the change in proportionate ownership. This section does not apply to a publicly held corporation that has filed with the OCCC the most recent 10K or 10Q filing of the licensee or the publicly held parent corporation, although a license transfer application or a new license application on transfer of ownership may be required under §83.303 of this title.

(2) A proportionate change in which an owner that previously held under 10% obtains an ownership interest of 10% or more, requires a transfer under §83.303 of this title.

§83.306. Updating Application and Contact Information [Reportable Actions After Application].

(a) Applicant's updates to license application information. Before a license application is approved, an applicant must report to the OCCC any [~~Any action, fact, or~~] information that would require a materially different answer than that given in the original license application and that relates to the qualifications for license_; ~~must be reported~~ within 10 calendar days after the person has knowledge of the [~~action, fact or~~] information.

(b) Licensee's updates to license application information. A licensee must report to the OCCC any information that would require a different answer than that given in the original license application within 30 calendar days after the licensee has knowledge of the information, if the information relates to any of the following:

- (1) the names of principal parties;
- (2) criminal history;
- (3) actions by regulatory agencies; or
- (4) court judgments.

(c) Contact information. Each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, including all mailing addresses, all phone numbers, and all e-mail addresses. It is a best practice for licensees to regularly review contact information on file with the OCCC to ensure that it is current and correct.

§83.310. Fees.

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

(c) Fingerprint processing. An applicant must pay a fee to a party designated by the Texas Department of Public Safety for pro-

cessing fingerprints. The Texas Department of Public Safety and the designated party determine the amount of the fee and whether it is refundable.

(d) [(e)] License amendments. A fee of \$25 must be paid each time a licensee amends a license by:

- (1) inactivating a license_;^[5]
- (2) activating an inactive license_;^[5]
- (3) changing the assumed name of the licensee_;^[5]
- (4) changing the organizational form or proportionate ownership that results in the exact same individuals or entities still owning the business and does not result in a transfer of ownership described by §83.303(b)(3) of this title (relating to Transfer of License; New Application on Transfer of Ownership); [~~does not require a transfer under §83.303(a)(4) or (5) of this title (relating to Transfer of License) or §83.304(e)(2) of this title (relating to Change in Form or Proportionate Ownership);~~]
- (5) providing notification of a new parent entity_;^[5] or
- (6) relocating an office.

(e) [(f)] License duplicates sent by mail. The fee for a license duplicate to be sent by mail is \$10.

(f) [(g)] Costs of hearings. The commissioner may assess the costs of an administrative appeal pursuant to Texas Finance Code, §14.207 for a hearing afforded under §83.307(d) of this title (relating to Processing of Application), including the cost of the administrative law judge, the court reporter, and agency staff representing the OCCC at a hearing.

(g) [(h)] Annual renewal and assessment fees.

(1) An annual assessment fee is required for each license consisting of:

(A) a fee not to exceed \$600; and

(B) a volume fee based upon the type of lending activity conducted and the volume of business that does not exceed an amount that is the greater of:

(i) \$0.03 per each \$1,000 transacted for license holders whose regulated operations consist of negotiating or brokering transactions on behalf of others in accordance with the most recent annual report filing (Schedule E, Brokered Loans) required by Texas Finance Code, §342.559;

(ii) \$0.03 per each \$1,000 advanced for license holders whose regulated operations occur within Texas Finance Code, Chapter 342, Subchapter F, in accordance with the most recent annual report filing (Schedule D, Lines 2 and 3) required by Texas Finance Code, §342.559; or

(iii) \$0.05 per each \$1,000 made or acquired under Texas Finance Code, Chapter 342, except amounts made or acquired by license holders covered by clauses (i) or (ii) of this subparagraph, or Texas Finance Code, Chapter 346, in accordance with the most recent annual report filing (Schedule D, Lines 1, 4, 6 and 8) required by Texas Finance Code, §342.559.

(2) The annual assessment fee for an inactive license will not exceed \$250.

(3) The maximum annual assessment fee for each licensed entity will not average more than \$1,200 per active licensed location.

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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Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

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7 TAC §83.303

The repeal is proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the proposed repeal are contained in Texas Finance Code, Chapter 342.

§83.303. *Transfer of License.*

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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DIVISION 4. LICENSE

7 TAC §83.403, §83.404

The rule changes are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 342.

§83.403. *Notice of Delinquency in Payment of Annual Assessment Fee.*

For purposes of Texas Finance Code, §342.155, and §83.309(d) of this title (relating to License Status), notice of delinquency in the payment of an annual assessment fee is given when the OCCC sends the delinquency notice: [the delinquency notice is sent to the licensee at the email or mailing address on file with the OCCC.]

(1) by mail to the address on file with the OCCC as a master file address; or

(2) by e-mail to the address on file with the OCCC as a master file e-mail address, if the licensee has provided a master file e-mail address.

§83.404. *Denial, Suspension, or Revocation Based on Criminal History.*

(a) Criminal history record information. After an applicant submits a complete license application, including all required fingerprints, and pays the fees required by §83.310 of this title (relating to Fees), the OCCC will investigate the applicant and its principal parties. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprints have been initially processed.

(b) Disclosure of criminal history. The applicant must disclose all criminal history information required to file a complete application with the OCCC. Failure to provide any information required as part of the application or requested by the OCCC reflects negatively on the belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions of the applicant and its principal parties;

(2) reliable documents or testimony necessary to make a determination under subsection (c), including letters of recommendation from prosecution, law enforcement, and correctional authorities;

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents, and has otherwise maintained a record of good conduct; and

(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid or are current.

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensee under Texas Finance Code, Chapter 342, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Originating, acquiring, or servicing loans under Texas Finance Code, Chapter 342 involves or may involve making representations to consumers regarding the terms of the loan, receiving money from consumers, remitting money to third parties, maintaining accounts, repossessing property without a breach of the peace, maintaining goods that have been repossessed, collecting due amounts in a legal manner, and foreclosing on real property in compliance with state and federal law. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

(A) theft;

(B) assault;

(C) any offense that involves misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);

(D) any offense that involves breach of trust or other fiduciary duty;

(E) any criminal violation of a statute governing credit transactions or debt collection;

(F) failure to file a government report, filing a false government report, or tampering with a government record;

(G) any greater offense that includes an offense described in subparagraphs (A) - (F) of this paragraph as a lesser included offense;

(H) any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph.

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensee.

(3) In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a licensee, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.023:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

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

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; and

(F) evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation from one or more of the following:

(i) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(ii) the sheriff or chief of police in the community where the person resides; and

(iii) other persons in contact with the convicted person.

(d) Crimes related to character and fitness. The OCCC may deny a license application if the OCCC does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §342.104(a)(1). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its principal parties. If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or (f)(2) of this section, this reflects negatively on an applicant's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that

the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2) - (3) of this section in its review of character and fitness.

(e) Revocation on imprisonment. A license will be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a license application, or suspend or revoke a license, based on any other ground authorized by statute, including the following:

(1) a conviction for an offense that does not directly relate to the duties and responsibilities of the occupation and that was committed less than five years before the date of application, as provided by Texas Occupations Code, §53.021(a)(2);

(2) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42.12, §3g, or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(3)-(4);

(3) errors or incomplete information in the license application;

(4) a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §342.156(3); and

(5) any other information warranting the belief that the business will not be operated lawfully and fairly, as provided by Texas Finance Code, §342.104(a)(1) and §342.156.

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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For further information, please call: (512) 936-7621



7 TAC §83.404, §83.405

The repeals are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the proposed repeals are contained in Texas Finance Code, Chapter 342.

§83.404. Effect of Criminal History Information on Applicants and Licensees.

§83.405. Crimes Directly Related to Fitness for License; Mitigating Factors.

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

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TRD-201602949

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: July 24, 2016

For further information, please call: (512) 936-7621



DIVISION 10. DUTIES AND AUTHORITY OF AUTHORIZED LENDERS

7 TAC §83.828

The rule changes are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 342.

§83.828. Files and Records Required (Subchapter E and F Lenders).

Each licensee must maintain records with respect to each loan made under Texas Finance Code, Chapter 342, Subchapters E and F, and make those records available for examination. The records required by this section may be maintained by using either a paper or manual recordkeeping system, electronic recordkeeping system, optically imaged recordkeeping system, or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(1) - (9) (No change.)

(10) Loan records and documents file.

(A) Generally. A licensee must maintain a loan records and documents file for each individual borrower. The loan records and documents file must contain all necessary records and documents to evidence compliance with applicable state and federal laws and regulations, including the Equal Credit Opportunity Act and the Truth in Lending Act. The loan records and documents file must include copies of the following records or documents:

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

(x) any written or recorded records relating to repossessions, legal actions, or foreclosure actions regarding the borrower or the borrower's collateral securing the loan; ~~and~~

(xi) any record maintained under the Department of Defense's Military Lending Act Rule, 32 C.F.R. §232.5, regarding whether the borrower is a covered borrower; and

(xii) [(xi)] any separate disclosures that are required by federal or state law, such as the notice to cosigner required by the Federal Trade Commission's Credit Practices Rule, 16 C.F.R. §444.3, or any mandatory disclosure to a covered borrower under the Department of Defense's Military Lending Act Rule, 32 C.F.R. §232.6.

(B) (No change.)

(C) Supplemental gap waiver agreement records. Each licensee must maintain in the borrower's individual file records supporting the settlements or denials of gap waiver agreement claims reported

in the gap waiver ~~[waiver]~~ agreement register. The records must include, if applicable:

(i) - (iv) (No change.)

(v) if the accident was not investigated by a law enforcement officer, a copy of the Texas Department of Public Safety "Driver's Crash Report" (Form CR-2) [~~"Driver's Accident Report"~~ (Form ST-2)] filed in connection with the total loss of the motor vehicle; and

(vi) (No change.)

(11) - (14) (No change.)

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

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Leslie L. Pettijohn

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Office of Consumer Credit Commissioner

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CHAPTER 87. TAX REFUND ANTICIPATION LOANS

The Finance Commission of Texas (commission) proposes amendments and a new rule in 7 TAC Chapter 87, concerning Tax Refund Anticipation Loans. The commission proposes amendments to §§87.102 - 87.105 and 87.107; and proposes new §87.201.

In general, the purpose of the revisions to these rules for tax refund anticipation loan facilitators is to implement changes resulting from the commission's review of Chapter 87 under Texas Government Code, §2001.039. The notice of intention to review 7 TAC Chapter 87 was published in the *Texas Register* on May 6, 2016 (41 TexReg 3317). The agency did not receive any comments on the notice of intention to review.

The agency circulated an early draft of proposed changes to interested stakeholders and then held a stakeholders meeting, including online participation. The agency believes that early participation by stakeholders in the rulemaking process results in more informed and balanced proposals.

The rule changes clarify the term of registration, require that registrants maintain current contact information, implement a statutory late filing fee, and add a required notice that registrants must provide explaining to consumers how they can file a complaint with the agency.

The individual purposes of the amendments to each rule and of the new rule are provided in the following paragraphs.

Proposed amendments to §87.102(a) remove unnecessary language and add a reference to the agency's name and acronym, Office of Consumer Credit Commissioner (OCCC). The agency believes that the use of "OCCC" will provide better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically.

Corresponding changes to further the use of this terminology are included throughout Chapter 87. The following provisions include proposed amendments to replace the use of "commissioner" or "commissioner's" with a reference to the OCCC: §87.103(a)(1) and §87.104.

Proposed new §87.103(b) explains that an applicant may apply for a registration for the current year or a registration for the following year. Subsection (b) also specifies the effective period of a registration. Although the current rules in Chapter 87 specify requirements for renewing a registration, they do not specify when the registration is effective or when it expires. Subsection (b) conforms to the agency's current practices and is intended to provide clarity on the effective period of registration.

Proposed new §87.103(c) explains that applicants and registrants must keep their contact information up-to-date. This provision is intended to ensure that the agency can contact registrants, so that the agency can carry out its responsibility to monitor facilitators and ensure compliance, as provided by Texas Finance Code, §352.005.

Proposed amendments to §87.105(a) - (c) amend current text to provide clarity and consistency. In particular, an amendment to subsection (c) replaces the term "Annual Assessments" with "Renewals," to ensure consistency with other rules in Chapter 87.

Proposed new §87.105(d) specifies that a facilitator must pay a \$250 late filing fee if the facilitator: 1) obtains a new registration after engaging in business as a facilitator (i.e., engages in unregistered activity), or 2) renews a registration for the current year after January 30. This requirement is based on Texas Finance Code, §349.302, which provides a late filing fee of \$250 for obtaining a late registration with the OCCC. Subsection (d) is intended to provide clarity regarding the amount of the late filing fee and the situations where it is required.

Proposed amendments to §87.107(a) conform to other amendments in the proposal. The current December 1 renewal deadline is replaced with a requirement to pay any late filing fee required by §87.105(d). This means that if a facilitator renews a registration for the current year after January 30, the facilitator must pay a \$250 late filing fee in order to renew. The amendments to subsection (a) are intended to clarify renewal requirements and ensure consistency with Texas Finance Code, §349.302.

Proposed new §87.107(b) specifies that a facilitator may not renew a registration that has been expired for more than one year, and that if a registration has been expired for more than one year, the facilitator must apply for a new registration. This provision is intended to clarify renewal requirements and ensure consistency with other amendments to the rules.

Proposed new §87.201 requires facilitators to provide a notice explaining how consumers can file a complaint with the OCCC. Subsection (a) describes the content of the OCCC notice, which includes the facilitator's contact information and the OCCC's contact information. Subsection (b) explains that the OCCC notice must be provided on either the privacy notice or the written disclosure of fees required under Texas Finance Code, §352.004. This requirement is based on Texas Finance Code, §11.307(b), which provides that the commission shall adopt rules requiring regulated entities to include complaint notices on legally required privacy notices. Because refund anticipation loan facilitators perform tax preparation services, they are required to provide privacy notices to consumers under federal

law, as provided by Regulation P, 12 C.F.R. §§1016.3(l)(3)(ii)(H), 1016.3(s)(1), 1016.4(a).

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rule changes are in effect there will be no fiscal implications for state or local government as a result of administering the changes.

Commissioner Pettijohn also has determined that for each year of the first five years the rule changes are in effect, the public benefit anticipated as a result of the changes will be that the commission's rules will be more easily understood by registrants and more easily enforced. Additionally, proposed new §87.201 will provide notice to consumers regarding how to file a complaint, resulting in the agency's enhanced ability to fulfill its regulatory duty of resolving consumer issues.

Additional economic costs may be incurred in order for registrants to comply with this proposal. The agency anticipates that any costs resulting from the proposal would be minimal and involve complying with proposed new §87.201, which requires registrants to add the OCCC notice to either their existing privacy notice or existing written disclosure provided to consumers.

The OCCC believes that proposed new §87.201 is necessary so that consumers and creditors will have the most current contact information for the OCCC, as well as readily available information for consumers explaining how they can file a complaint with the OCCC.

For those who will be required to comply with the proposed new rule, the anticipated costs would include the costs associated with adding the notice to existing forms, or producing new forms, and costs attributable to the loss of obsolete forms inventory. The agency is considering a delayed implementation date for use of the revised forms, which will help minimize potential costs and allow use of current forms inventory. In particular, the agency is considering a possible compliance date of January 1, 2017, and invites comments on this issue.

Overall, the agency anticipates that any costs involved to comply with proposed new §87.201 will be minimal for most registrants. Registrants are already required under federal law to provide privacy notices, and they are already required to provide cost disclosures under Texas Finance Code, §352.004. There are multiple ways to comply with the proposed new rule: 1) add the OCCC notice to the current federal privacy notice in the box for "Other important information"; 2) add the OCCC notice to the registrant's existing disclosure form under Texas Finance Code, §352.004; or 3) provide the OCCC notice on a new page that is part of one of these two forms. For the third option, the agency estimates that costs will not exceed \$0.05 per new page printed.

In order to obtain more complete information, the agency would like to invite comments from registrants on any costs involved to comply proposed new §87.201, as well as any alternatives to lessen those costs while achieving the purpose of the proposed new rule.

Any costs of complying with the proposed amendments to §87.105, concerning Fees, are imposed by the existing statutory requirements, and are not a result of the proposed amendments to this section. Additionally, the proposed amendments solely relate to tax refund anticipation loan facilitators that conduct unregistered business or that fail to timely renew. Thus, for registrants that properly comply with registration requirements, there will be no costs imposed by the proposed amendments.

The agency is not aware of any adverse economic effect on small businesses as compared to the effect on large businesses resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the agency invites comments from interested stakeholders and the public on any economic impact on small businesses, as well as any alternative methods of achieving the purpose of this proposal should that effect be adverse to small businesses.

Aside from the previously outlined costs to provide the OCCC notice in proposed §87.201, there will be no other effect on individuals required to comply with the rule changes as proposed.

Comments on the proposal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.texas.gov. To be considered, a written comment must be received by 5:00 p.m. central time on or before the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

SUBCHAPTER A. REGISTRATION PROCEDURES

7 TAC §§87.102 - 87.105, 87.107

The rule changes are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code. The rule changes are also proposed under Texas Finance Code, §352.003, which authorizes the commission to prescribe procedures for the registration of tax refund anticipation loan facilitators. Proposed new §87.201 is proposed under Texas Finance Code, §11.307(b), which provides that the commission shall adopt rules requiring regulated entities to include complaint notices on legally required privacy notices.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 11 and 352.

§87.102. *Filing of New Application.*

(a) New application. An application for issuance of a new tax refund anticipation loan facilitator registration must be submitted [as prescribed by the commissioner at the date of filing and] in accordance with the [commissioner's] instructions of the Office of Consumer Credit Commissioner (OCCC).

(b) Required information. The application must include the following required information. All questions must be answered.

(1) Application for Registration of Tax Refund Anticipation Loan Facilitator.

(A) Each location in this state at which e-file providers authorized by the Internal Revenue Service file tax returns on behalf of borrowers for whom the facilitator acts to allow the making of a tax refund anticipation loan must be separately registered.

(B) The person responsible for the day-to-day operation of the applicant's proposed business location must be named.

(2) Assumed names. For any applicant that does business under an assumed name as that term is defined in Texas Business and Commerce Code, §71.002, the applicant must provide all assumed names used.

§87.103. *Completion [Processing] of Application and Effective Period of Registration.*

(a) Complete application. An application is complete when it:

(1) conforms to the rules and the [commissioner's] published instructions of the Office of Consumer Credit Commissioner (OCCC);

(2) all fees have been paid; and

(3) all requests for additional information have been satisfied.

(b) Effective period. An applicant may apply for a registration for the current year or a registration for the following year.

(1) A registration for the current year is effective beginning on the date the application is complete, and expires on December 31 of the current year.

(2) A registration for the following year is effective beginning on January 1 of the following year, and expires on December 31 of the following year.

(c) Contact information. Each applicant or registrant is responsible for ensuring that all contact information on file with the OCCC is current and correct, including all mailing addresses, all phone numbers, and all e-mail addresses. It is a best practice for registrants to regularly review contact information on file with the OCCC to ensure that it is current and correct.

§87.104. *Relocation of Registered Location.*

A registered tax refund anticipation loan facilitator may move the business office from the registered location to any other location by giving notice of intended relocation to the Office of Consumer Credit Commissioner (OCCC) [commissioner]. The notice must include the present address of the registered location, the contemplated new address of the registered location, and the approximate date of relocation.

§87.105. *Fees.*

(a) New registrations. For a new registration, the applicant must pay a [A] \$50 nonrefundable [non-refundable] fee for each registered location [is assessed each time an application for a new registration under this chapter is filed].

(b) Registration amendments. A registered facilitator must pay a fee of \$25 to amend [must be paid each time a registered facilitator amends] a registration by changing the assumed name of the registrant or relocating an office.

(c) Renewals. For a renewal, the registered facilitator must pay an [Annual assessments. An] annual fixed fee of \$50 [is required] for each registered [tax refund anticipation loan] location.

(d) Late filing fee. As provided by Texas Finance Code, §349.302(b), a facilitator must pay a \$250 late filing fee for each registered location if the facilitator:

(1) obtains a new registration after the facilitator has begun engaging in business as a facilitator; or

(2) obtains a renewal for the current year after January 30.

§87.107. *Annual Renewal.*

(a) Renewal requirements. A [Not later than December 1, a] registered tax refund anticipation loan facilitator may renew its registration by providing the following:

(1) the renewal fees required by §87.105(c) of this title (relating to Fees); and]

(2) any late filing fees required by §87.105(d) of this title; and

(3) [(2)] any other information required by the commissioner.

(b) Expiration. A facilitator may not renew a registration that has been expired for more than one year. If a facilitator's registration has been expired for more than one year, then the facilitator must apply for a new registration under §87.102 of this title (relating to Filing of New Application) in order to obtain a registration.

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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Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

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For further information, please call: (512) 936-7621



SUBCHAPTER B. DISCLOSURES

7 TAC §87.201

The rule changes are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code. The rule changes are also proposed under Texas Finance Code, §352.003, which authorizes the commission to prescribe procedures for the registration of tax refund anticipation loan facilitators. Proposed new §87.201 is proposed under Texas Finance Code, §11.307(b), which provides that the commission shall adopt rules requiring regulated entities to include complaint notices on legally required privacy notices.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 11 and 352.

§87.201. OCCC Notice.

(a) Required notice. A refund anticipation loan facilitator must provide the following notice to each consumer: "For questions or complaints about this transaction, contact the loan facilitator, (insert name of facilitator), at (insert facilitator's phone number and, at facilitator's option, one or more of the following: mailing address, fax number, website, e-mail address). The Office of Consumer Credit Commissioner (OCCC) is a state agency, and it enforces certain laws that apply to the facilitator. If a complaint or question cannot be resolved by contacting the facilitator, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov."

(b) Location of notice. A facilitator must provide the notice described by subsection (a) by one or both of the following methods:

(1) including the notice on each privacy notice that the facilitator is required to provide to a consumer under state or federal law;
or

(2) including the notice on each written disclosure that the facilitator is required to provide to a borrower under Texas Finance Code, §352.004.

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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Commissioner

Office of Consumer Credit Commissioner

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For further information, please call: (512) 936-7621



TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 2. GENERAL POLICIES AND PROCEDURES

SUBCHAPTER A. PRINCIPLES AND PROCEDURES OF THE COMMISSION

13 TAC §2.51

The Texas State Library and Archives Commission proposes amendments to 13 TAC §2.51, regarding Public Record Fees. The proposed rule amendment would add language to establish the charges associated with the provision of photographic archival materials in digital format.

Division Director Jelain Chubb has determined there are no fiscal implications for state or local government as a result of the adoption of the amendment. Ms. Chubb has also determined that there are no fiscal implications for small or micro businesses.

Written comments on the proposed rules may be submitted to Angela Kent, Archives and Information Services Division, Texas State Library and Archives Commission, Box 12927, Austin, Texas 78711-2927; fax: (512) 463-5430 or email to akent@tsl.texas.gov.

The amended section is proposed under Government Code §441.006.

The proposed amendment affects Government Code §441.006, which authorizes the Commission to adopt rules and to make state records and other resources available to the public.

§2.51. Public Record Fees.

(a) Charges for Public Records and Library Resource Materials. The Texas State Library will charge for reproductions of materials from its collections of library and archival materials that are maintained for public reference, for copies of public records of other agencies stored in the State Records Center, and for records of the commission in accordance with the Office of the Attorney General's rules concerning Cost of Copies of Public Information (1 TAC §§70.1 - 70.12) and as follows:

(1) Certification of copies is \$1.00 per instrument, which may include several pages with certification required only once.

(2) If a customer requests items printed from digital information resources, the items will be billed at the page rate for paper copies.

(3) If a customer requests printing of large format materials held in the Texas State Archives, the charge will be assessed at an established per inch rate. The rate will be reviewed on an annual basis. If material must first be digitized, an additional fee of \$5.50 will be charged.

(4) Supplies, postage, shipping, and other expenses are billed at actual costs.

(5) The library will arrange for the duplication of photographic images in its archival collections for \$10.00 per image plus commercial photo reproduction costs and postage.

(6) Digital images of photographic materials held in the Texas State Archives may be provided. If materials must first be digitized, a fee of \$3.00, or \$5.50 for large format items, will be charged.

(7) [(6)] A customer will be billed for third party access or use charges. Examples of services where use charges might occur include:

(A) Digital information resources available through on-line services;

(B) Document delivery or interlibrary loan services for providing materials or copies.

(8) [(7)] The minimum charge for any service requiring preparation of an invoice is \$1.00.

(b) Reproduction of Copyrighted Materials. Reproduction of copyrighted materials will be carried out in conformance with the copyright law of the United States (Title 17, United States Code).

(c) Labor Charges. The library will not charge for labor or overhead to retrieve materials or records or research questions. If computer programming is necessary, the library will charge for labor to retrieve digital information in response to an information request.

(d) Records of Third Parties. The library will not provide copies of or access to the records of other agencies housed in the State Records Center without written permission of the agency.

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 June 7, 2016.

TRD-201602863

Mark Smith

Director and Librarian

Texas State Library and Archives Commission

Earliest possible date of adoption: July 24, 2016

For further information, please call: (512) 463-5508



CHAPTER 6. STATE RECORDS

SUBCHAPTER A. RECORDS RETENTION SCHEDULING

13 TAC §6.10

(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 §6.10 is not included in the print version of the Texas Register. The figure is available in the html version of the June 24, 2016, issue of the Texas Register on-line.)

The Texas State Library and Archives Commission proposes to amend 13 TAC §6.10 regarding the Texas State Records Retention Schedule (RRS) pursuant to the Government Code §441.185(f). The amendment is being proposed to address new requirements set forth in Government Code §441.1855 concerning retention of contracts and related documents by state agencies. The new law requires state agencies to retain contracts and contract solicitation documents for a period of seven years, and the RRS is amended to reflect that requirement.

Craig Kelso, Director, State and Local Records Management Division, has determined that for each year of the first five years the amendment is in effect, there may be fiscal implications for state government as a result of administering or enforcing the amendment. Because of the many variables in the many state agencies, it is not possible to estimate the total fiscal impact of this proposal. Mr. Kelso does not anticipate either a loss of, or an increase in, revenue to state or local governments as a result of the proposed amendment.

Mr. Kelso has also determined that for each year of the first five years the amendment is in effect the public benefit will be that the amended schedules will help to provide better management of records by improving retention of public records.

There will be no impact on small businesses, micro-businesses, or individuals as a result of enforcing the amendment as proposed.

Written comments on the proposed rules may be submitted to Sarah Jacobson, Manager, Records Management Assistance, Box 12927, Austin, Texas 78711; by fax to (512) 936-2306; or by email to sjacobson@tsl.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amended section is proposed under Government Code §441.185(f) which grants authority to the Texas State Library and Archives Commission to prescribe a minimum retention period for any state record unless a minimum retention period for the record is prescribed by another federal or state law, regulation, or rule of court.

The proposed section affects Government Code §441.185(f).

§6.10. Texas State Records Retention Schedule.

A record listed in the Texas State Records Retention Schedule (Revised 4th Edition) must be retained for the minimum retention period indicated by any state agency that maintains a record of the type described. Figure: 13 TAC §6.10

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

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TRD-201602873

Mark Smith

Director and Librarian

Texas State Library and Archives Commission

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For further information, please call: (512) 463-5449



TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 22. PROCEDURAL RULES

The Public Utility Commission of Texas (commission) proposes new §22.106, relating to Statement of No Access, and amendments to §22.2, relating to Definitions; §22.31, relating to Classification in General; §22.32, relating to Administrative Review; §22.33, relating to Tariff Filings; §22.52, relating to Notice in Licensing Proceedings; §22.71, relating to Filing of Pleadings, Documents, and Other Materials; §22.72, relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission; §22.73, relating to General Requirements for Applications; §22.74, relating to Service of Pleadings and Documents; §22.75, relating to Examination and Correction of Pleadings and Documents; §22.76, relating to Amended Pleadings; §22.78, relating to Responsive Pleadings and Emergency Action; §22.101, relating to Representative Appearances; §22.103, relating to Standing to Intervene; §22.104, relating to Motions to Intervene; §22.125, relating to Interim Relief; §22.126, relating to Bonded Rates; §22.127, relating to Certification of an Issue to the Commission; §22.141, relating to Forms and Scope of Discovery; §22.183, relating to Disposition by Default; §22.225, relating to Written Testimony and Accompanying Exhibits; §22.226, relating to Exhibits; §22.242, relating to Complaints; §22.243, relating to Rate Change Proceedings; §22.244, relating to Review of Municipal Rate Actions; §22.246, relating to Administrative Penalties; §22.263, relating to Final Orders; and §22.264, relating to Rehearing. The proposed new rule and amendments will update the commission's service procedures for all industries regulated by the commission; further address the application of the commission's procedural rules to proceedings involving water and sewer utilities; update the commission's filing procedures to streamline filing of routine reports, clarify filing requirements for maps and digital mapping data, and make other minor changes to the commission's filing practices; address recent changes to the Administrative Procedure Act (APA), Texas Government Code Chapter 2001; make limited updates to the commission's procedural practices for all industries regulated by the commission; and reflect changes to the commission's rules and internal organizational structure. Project Number 45116 is assigned to this proceeding.

Tammy Benter, Division Director of the Water Utility Regulation 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. Benter has determined that for each year of the first five years the proposed sections are in effect, the public benefits anticipated as a result of enforcing the sections will be compliance with the APA, modernized service procedures, clearer applicability of the commission's procedural rules to water and sewer utilities, a simplified filing process for reports, clearer procedural guidelines for filing maps and digital mapping data, improvements to the commission's filing procedures, and streamlined commission procedural practices. 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. Benter 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 the APA, Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the APA, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Wednesday, August 3, 2016. The request for a public hearing must be received by Monday, July 25, 2016.

Comments on the proposed new section and 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, by 3:00 p.m. on Monday, July 25, 2016. Sixteen copies of comments to the proposed amendments are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted by 3:00 p.m. on Monday, August 8, 2016. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt and amend the identified sections. All comments should refer to Project Number 45116.

SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

16 TAC §22.2

The amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (West 2007 and Supp. 2015) (PURA) and under the Texas Water Code Annotated §13.041(b) (West 2008 & Supp. 2015) (TWC), which provide the Public Utility 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.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052 and TWC §13.041(b).

§22.2. Definitions.

The following terms, when used in this chapter, shall have the following meanings, unless the context or specific language of a section clearly indicates otherwise:

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

(4) Affected person--For a matter involving an entity that provides electric or telecommunications service, the [The] definition of affected person is that definition given in PURA [the Public Utility Regulatory Act,] §11.003(1). For a matter involving an entity that provides water or sewer service, the definition of affected person is that definition given in TWC §13.002(1).

(5) - (26) (No change.)

(27) Major rate proceeding--Any proceeding filed pursuant to PURA, §§36.101-36.111, 36.201-36.203 and 36.205 or §§51.009, 53.101-53.113, 53.201 and 53.202 involving an increase in rates which would increase the aggregate revenues of the applicant more than the greater of \$100,000 or 2.5%. In addition, a major rate proceeding is any rate proceeding initiated pursuant to PURA, §§36.151-36.156 or §§53.151 and §53.152 in which the respondent utility is directed to file

a rate filing package. For water and sewer utilities, a rate filing package filed under TWC §13.187 is a major rate proceeding.

(28) - (38) (No change.)

(39) PWS--Public Water System.

(40) ~~[(39)]~~ Relative--An individual (or spouse of an individual) who is related to the individual in issue (or the spouse of the individual in issue) within the second degree of consanguinity or relationship according to the civil law system.

(41) ~~[(40)]~~ Respondent--A person under the commission's jurisdiction against whom any complaint or appeal has been filed or who is under formal investigation by the commission.

(42) Retail Public Utility--Any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.

(43) ~~[(41)]~~ Rulemaking--A proceeding pursuant to APA, Texas Government Code, Chapter 2001, Subchapter B conducted to adopt, amend, or repeal a commission rule.

(44) ~~[(42)]~~ SOAH--The State Office of Administrative Hearings.

(45) TCEQ--The Texas Commission on Environmental Quality.

(46) TWC--The Texas Water Code, as it may be amended from time to time.

(47) ~~[(43)]~~ Unprotested case--A contested case in which a hearing is not requested [necessary].

(48) WQ--Water Quality discharge permit.

(49) ~~[(44)]~~ Working day--A day on which the commission is open for the conduct of business.

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

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SUBCHAPTER C. CLASSIFICATION OF APPLICATIONS OR OTHER DOCUMENTS INITIATING A PROCEEDING

16 TAC §§22.31 - 22.33

The amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (West 2007 and Supp. 2015) (PURA) and under the Texas Water Code Annotated §13.041(b) (West 2008 & Supp. 2015) (TWC), which provide the Public Utility 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.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052 and TWC §13.041(b).

§22.31. *Classification in General.*

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

(d) Control Number Assignment. A control number will be assigned to a docket only at the time of filing an application unless otherwise required by rule or on approval of the director of the Commission Advising and Docket Management Division or the director's designee.

(e) Closing Unused Control Numbers. Any control number assigned to a docket before the filing of an application will be closed if the application is not filed within 25 days of assignment of the control number unless otherwise directed by the director of the Commission Advising and Docket Management Division or the director's designee.

§22.32. *Administrative Review.*

(a) Applications qualified for administrative review [Applications Qualified for Administrative Review]. An application, other than a major rate proceeding, may be approved by an administrative law judge without a hearing or action by the commission, under the following conditions:

(1) - (4) (No change.)

(b) TWC applications without notice requirements. An administrative law judge, without a hearing or action by the commission, may approve an application filed under the TWC that does not require a notice or hearing.

(c) ~~[(b)]~~ Administrative law judge's order [Administrative Law Judge's Order]. If an application qualifies for administrative review, the administrative law judge shall issue an order with proposed findings of fact and conclusions of law as soon as is reasonably practicable. The order shall be served upon each commissioner and all parties.

(d) ~~[(c)]~~ Finality of order [Finality of Order]. At the request of any commissioner or the administrative law judge, the order shall be placed on the agenda to be considered in open meeting. On such request, the Commission Advising and Docket Management Division shall provide notice to the parties that the order will be considered by the commission at open meeting and the open meeting at which the order will be considered. The commission may approve the order of the administrative law judge, vacate the order of the administrative law judge and remand the docket for hearing or additional proceedings, or modify the order with the agreement of the parties. The [If, within 20 days after issuance of the administrative law judge's order, the commission has not scheduled the application to be considered in open meeting, the] order is deemed approved and becomes final 20 days after issuance by the administrative law judge unless before the 20th day the administrative law judge or a commissioner has requested that the order be considered by the commission at open meeting, in which case the order may become final only after action by the commission in open meeting.

(e) ~~[(d)]~~ Notice requirements [Notice Requirements]. Nothing in this section shall be construed to alter any notice requirement imposed on any proceeding by statute, rule, or order.

(f) ~~[(e)]~~ Time limits [Time Limits]. Nothing in this section shall be construed to alter any time limit imposed on any proceeding by a statute, rule, or order.

(g) ~~(f)~~ Exceptions to administrative law judge's order [Exceptions to Administrative Law Judge's Order]. Nothing in this section shall be construed to preclude any party from filing exceptions to the administrative law judge's order, provided such exceptions are filed with the commission within 15 days after the issuance of the administrative law judge's order.

§22.33. *Tariff Filings.*

(a) Applicability and classification. This section shall apply to undocketed applications by utilities to change their tariffs. Such tariff filings shall be classified as "electric tariff filings," "regular telephone tariff filings," ~~[or] "special telephone tariff filings,[-]"~~ or "water or sewer retail public utility filings (other than a municipality, district, or county)." Electric tariff filings shall be those applications filed pursuant to §25.241 of this title (relating to Form and Filing of Tariffs). Regular telephone tariff filings shall be those applications filed pursuant to §26.207 of this title (relating to Form and Filing of Tariffs) and §26.208 of this title (relating to General Tariff Provisions). Special telephone tariff filings shall be those applications filed by telecommunications utilities pursuant to ~~[§26.212 of this title (relating to Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs))]~~ §26.209 of this title (relating to New and Experimental Services), §26.211 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges), and §26.210 of this title (relating to Promotional Rates for Local Exchange Company Services) or PURA, §§53.251, 53.252, 53.301-53.308 or 55.004. Filings made by a water or sewer retail public utility (other than a municipality, district, or county) shall be those applications filed pursuant to §24.21 of this title (relating to Form and Filing of Tariffs). This section shall apply unless it is inconsistent with Chapters 24, 25, or 26 of this title, or PURA or the TWC.

(b) Standards for docketing. Tariff filings, other than a tariff filing made in compliance with a rule or final order of the commission, shall be docketed under the following circumstances:

(1) if an electric, ~~[or] regular telephone,~~ or water or sewer utility tariff filing would change the revenues received by the utility for an existing service;

(2) if an electric, ~~[or] regular telephone,~~ or water or sewer utility tariff filing would allow the utility to begin charging for a service previously available but for which there was not a separate charge;

(3) (No change.)

(4) if an electric, ~~[or] regular telephone,~~ or water or sewer utility tariff filing would increase a customer's bill even though the rate for a particular service is not being changed;

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

(c) Effective date.

(1) Except for tariffs required to be filed pursuant to a commission rule specifying the effective date of such tariffs and for tariffs filed in compliance with a final order of the commission, no electric, ~~[or] regular telephone,~~ TWC §13.187, or TWC §13.1871 tariff filing may take effect prior to 35 days after filing unless approved by the presiding officer. The requested effective date will be assumed to be 35 days after filing unless the applicant requests a different date in its application. The presiding officer may suspend the operation of the electric or regular telephone tariff filing for 150 days beyond the effective date, or, with the agreement of the applicant, to a later date.

(2) For Class A water or sewer utilities, the presiding officer may suspend the operation of the water or sewer tariff filing for 150 days beyond the effective date, or, with the agreement of the applicant, to a later date. For Class B water or sewer utilities and Class

C water or sewer utilities filing as Class B utilities pursuant to TWC §13.1872(c)(2), the presiding officer may suspend the operation of the water or sewer tariff filing for 265 days beyond the effective date, or with the agreement of the applicant, to a later date. For Class C water or sewer utilities, the effective date shall be established in the commission's order and shall be at least 30 days after the notice to ratepayers.

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

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SUBCHAPTER D. NOTICE

16 TAC §22.52

The amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (West 2007 and Supp. 2015) (PURA) and under the Texas Water Code Annotated §13.041(b) (West 2008 & Supp. 2015) (TWC), which provide the Public Utility 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.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052 and TWC §13.041(b).

§22.52. *Notice in Licensing Proceedings.*

(a) Notice in electric licensing proceedings. In all electric licensing proceedings except minor boundary changes, the applicant shall give notice in the following ways:

(1) Applicant shall publish notice once of the applicant's intent to secure a certificate of convenience and necessity in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, no later than the week after the application is filed with the commission. This notice shall identify the commission's docket number and the style assigned to the case by the Central Records Division. In electric transmission line cases, the applicant shall obtain the docket number and style no earlier than 25 days prior to making the application by filing a preliminary pleading requesting a docket assignment. The notice shall identify in general terms the type of facility if applicable, and the estimated expense associated with the project. The notice shall describe all routes without designating a preferred route or otherwise suggesting that a particular route is more or less likely to be selected than one of the other routes.

(A) The notice shall include all the information required by the standard format established by the commission for published notice in electric licensing proceedings. The notice shall state the date established for the deadline for intervention in the proceeding (date 45 days after the date the formal application was filed with the commission; or date 30 days after the date the formal application was filed with the commission for an application for certificate of convenience and necessity filed pursuant to PURA [the Public Utility Regulatory

Act] §39.203(e)) and that a letter requesting intervention should be received by the commission by that date.

(B) - (E) (No change.)

(2) - (7) (No change.)

(b) (No change.)

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SUBCHAPTER E. PLEADINGS AND OTHER DOCUMENTS

16 TAC §§22.71 - 22.76, 22.78

The amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (West 2007 and Supp. 2015) (PURA) and under the Texas Water Code Annotated §13.041(b) (West 2008 & Supp. 2015) (TWC), which provide the Public Utility 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.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052 and TWC §13.041(b).

§22.71. *Filing of Pleadings, Documents, and Other Materials.*

(a) Applicability. This section applies to all pleadings as defined in §22.2 of this title (relating to Definitions) and the following documents:

(1) (No change.)

(2) Applications [filed pursuant to the Public Utility Regulatory Act (PURA) or the commission's substantive rules in Chapter 25 and 26 of this title].

(3) - (5) (No change.)

(b) File with the commission filing clerk. Except as provided in §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission), all [AH] pleadings and documents required to be filed with the commission shall be filed with the commission filing clerk, and shall state the control number on the heading, if known.

(c) Number of items to be filed. Unless otherwise provided by this chapter or ordered by the presiding officer, the number of copies to be filed, including the original, are as follows:

(1) - (11) (No change.)

(12) reports filed pursuant to PURA, the TWC, [the Public Utility Regulatory Act] or the commission's Substantive Rules: four copies;

(13) comments to proposed rulemakings: 16 copies; and

(14) (No change.)

(d) Confidential material:

(1) A party providing materials designated as confidential shall deliver them to Central Records in an enclosed, sealed and labeled envelope ("confidential envelope"). The confidential envelope shall not include any non-confidential materials unless directly related to and essential for clarity of the confidential material. Each copy of confidential material shall be provided in a separate sealed and labeled envelope. Parties shall notify the Central Records' filing clerk at the time of [prior to] submission of any documents to be file-stamped whether the submission includes any confidential material. If the confidential envelope does not meet the requirements of subparagraph (A)(i) - (vii) of this paragraph, both the envelope and any document directly related to the confidential material will be immediately returned to the submitting party without being filed-stamped. If the confidential envelope meets the requirements of subparagraph (A)(i) - (vii) of this paragraph, Central Records shall accept it on a provisional basis. [The confidential documents manager for the Legal Division shall review the confidential envelope and documents for compliance with subparagraphs (A) - (C) of this paragraph. Any envelope and/or documents that do not meet the requirements of these subparagraphs will be returned to the submitting party by the confidential documents manager.] The submitting party shall be required to bring the envelope and/or materials into compliance with this section and resubmit the envelope and materials through Central Records. Parties shall resubmit any documents returned by [either] the filing clerk [or the confidential documents manager] no later than 3:00 p.m. the next working day after notification of the deficiency. Any issue regarding timeliness of the filing shall be addressed by the administrative law judge assigned to the proceeding. No submitting party shall deliver any confidential materials directly to commission staff. Confidential documents related to settlement negotiations shall be submitted pursuant to paragraph (4) of this subsection. Confidential documents submitted for *in camera* review shall be submitted pursuant to paragraph (5) of this subsection.

(A) - (D) (No change.)

(2) (No change.)

(3) Unless otherwise provided by this chapter or order of the presiding officer, all confidential material shall be delivered to Central Records. All commission employees receiving confidential materials through Central Records, or otherwise handling or routing confidential materials for any purpose, shall sign an agreement not to open any sealed containers marked pursuant to paragraph (1) of this subsection. Confidential materials shall not be filed with the commission electronically unless specific arrangements are made and agreed to by the parties involved on a case-by-case basis.

(A) Materials related to arbitrations. Central Records will maintain one file copy that is not accessible to the public or commission staff and one copy that may be viewed by parties who have signed an agreement to abide by the protective order in the proceeding. The party who provides the confidential material must deliver one copy of confidential materials not related to discovery to the commission's arbitrators assigned to the matter. [route one copy to the commission's Policy Development Division for the appeals file and one copy to the commission's Legal Division. Commission staff who have signed an agreement to abide by the protective order in the proceeding may view the copy of the confidential material maintained by the Legal Division.]

(B) Material related to contested cases transferred to SOAH and other docketed proceedings. Central Records will maintain one file copy that is not accessible to the public or commission staff and one copy that may be viewed by parties who have signed an agreement to abide by the protective order in the proceeding. Parties [Central

Records will route the additional copy to the commission's Legal Division. Commission staff] who have signed an agreement to abide by the protective order in the proceeding may view the copy of the confidential material maintained by the commission's Central Records [Legal] Division. The party who provides the confidential material will be responsible for delivering one copy of confidential materials not related to discovery to SOAH.

(C) Request for proposal for goods and/or services. Confidential material related to a request for proposal for goods and/or services will be delivered to the commission's Agency [General] Counsel or the Agency [General] Counsel's authorized representative.

(D) Notwithstanding subparagraphs (A) - (C) of this paragraph, commission employees in the Commission Advising and Docket Management Division and in the commissioners' offices shall sign one confidentiality and non-disclosure agreement applicable to all proceedings. Employees in the Commission Advising and Docket Management Division that are assigned to a matter and employees in the commissioners' offices may view and check out confidential material for that matter maintained by the Central Records Division and may disclose such information to other employees in the Commission Advising and Docket Management Division that are assigned to the matter and to employees in the commissioners' offices.

(4) - (6) (No change.)

(e) Receipt by the commission. Pleadings and any other documents shall be deemed filed when the required number of copies and the electronic copy, if required, in conformance with §22.72 of this title are presented to the commission filing clerk for filing. Reports that are exempt from being filed with the commission filing clerk under §22.72 of this title shall be deemed received when a record containing the data from the report is created in the system used by the commission to store the report. The commission filing clerk shall accept pleadings and documents if the person seeking to make the filing is in line by the time the pleading or document is required to be filed.

(f) (No change.)

(g) Office hours of Central Records and the commission filing clerk.

[(+) The office hours of Central Records are from 9:00 a.m. to 5:00 p.m., Monday through Friday, on working days, except on Fridays and open meeting days. On Fridays, [when] Central Records will close for all purposes from noon to 1:00 p.m.

[(2) With the exception of open meeting days, for the purpose of filing documents, the office hours of the commission filing clerk are from 9:00 a.m. to 5:00 p.m., Monday through Friday, on working days.]

[(3) On open meeting days, Central Records will open at 8:00 a.m., and the commissioners and the Commission Advising and Docket Management [Policy Development] Division may file items related to the open meeting on behalf of the commissioners between the hours of 8:00 a.m. and 9:00 a.m. No other filings will be accepted between the hours of 8:00 a.m. and 9:00 a.m. The commissioners and the Commission Advising and Docket Management [Policy Development] Division shall provide the filing clerk with an extra copy of all documents filed pursuant to this paragraph for public access.

[(4) Central Records will open at 8:00 a.m. on open meeting days. With the exception of paragraph (3) of this subsection, no filings will be accepted between the hours of 8:00 a.m. and 9:00 a.m.]

[(h) Filing a copy or facsimile copy in lieu of an original. Subject to the requirements of subsection (e) of this section and §22.72 of this title, a copy of an original document or pleading, including a copy

that has been transmitted through a facsimile machine, may be filed, so long as the party or the attorney filing such copy maintains the original for inspection by the commission or any party to the proceeding.]

(h) [(+) Filing deadline. All documents shall be filed by 3:00 p.m. on the date due, unless otherwise ordered by the presiding officer.

(i) [(+) Filing deadlines for documents addressed to the commissioners.

(1) Except as provided in paragraph (2) of this subsection, all documents from parties addressed to the commissioners relating to any proceeding that has been placed on the agenda of an open meeting shall be filed with the commission filing clerk no later than seven days prior to the open meeting at which the proceeding will be considered provided that no party is prejudiced by the timing of the filing of the documents. Documents that are not filed before the deadline and do not meet one of the exceptions in paragraph (2) of this subsection, will be considered untimely filed, and may not be reviewed by the commissioners in their open meeting preparations.

(2) The deadline established in paragraph (1) of this subsection does not apply if:

(A) The documents have been specifically requested by one of the commissioners;

(B) The parties are negotiating and such negotiation requires the late filing of documents; or

(C) Good cause for the late filing exists. Good cause must clearly appear from specific facts shown by written pleading that compliance with the deadline was not reasonably possible and that failure to meet the deadline was not the result of the negligence of the party. The finding of good cause lies within the discretion of the commission.

(3) Documents filed under paragraph (2) of this subsection shall be served on all parties by hand delivery, facsimile transmission, or by overnight courier delivery.

§22.72. *Formal Requisites of Pleadings and Documents to be Filed with the Commission.*

(a) Applicability. This section applies to all pleadings as defined in §22.2 of this title (relating to Definitions) and the following documents:

(1) (No change.)

(2) Applications [filed pursuant to the Public Utility Regulatory Act (PURA) or the commission's substantive rules in Chapter 25 and 26 of this title].

(3) (No change.)

(4) Reports pursuant to PURA, commission rules or request of the commission, however, the following reports are exempt from the requirements of subsections (c), (d), (e), (f) and (h) of this section:

(A) (No change.)

(B) Reports prepared for other agencies and filed as information only with the commission. These reports will be accepted by the commission as filed with the other agency; [and]

(C) Reports filed pursuant to §24.73 of this title (relating to Water and Sewer Utilities Annual Reports), §25.73(a)(3) of this title (relating to Financial and Operating Reports), and §26.73(a)(2) of this title (relating to Financial and Operating Reports); and

(D) Reports that are submitted directly to the commission using the commission's website, pursuant to subsection (j) of this section.

(5) (No change.)

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

(d) Citation form. Any filing with the commission should comply with the rules of citation, set forth, in the following order of preference, by the commission's "Citation and Style Guide," the most current edition of the "Texas Rules of Form," published by the University of Texas Law Review Association (for Texas authorities), and the most current edition of "A Uniform System of Citation," published by The Harvard Law Review Association[?] (for all other authorities). Neither Rule 1.1 of the Uniform System nor the comparable portion of the "Texas Rules of Form" shall be applicable in proceedings.

(e) Signature. Every pleading and document shall be signed by the party or the party's authorized representative, and shall include the party's address, telephone number, and, if available, facsimile machine number. In addition, every pleading and document shall include an electronic mail address, unless the party or the party's authorized representative has filed a statement under §22.106 of this title (relating to Statement of No Access). If the person signing the pleading or document is an attorney licensed in Texas, the attorney's state [State] bar number shall be provided.

(f) (No change.)

(g) Hard copy filing standards. Hard copies of each document shall be filed with the commission in accordance with the requirements set forth in paragraphs (1) - (7) of this subsection.

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

(4) A cover letter may be attached to any document filed with the commission, and must be included with tariff-sheet filings. [No cover letter shall be attached to any document, except tariff sheets.] The cover letter for tariff sheets shall state the control number, if available, the name of the party submitting the tariff sheets, sufficient detail to identify the tariff sheets, and shall be signed by the party or the party's representative.

(5) (No change.)

(6) If the document contains a barcode, the barcode shall be covered or redacted.

(7) If the document contains personally identifiable information such as social security numbers or bank account numbers, either the information must be covered or redacted, or the document shall be filed confidentially pursuant to §22.71(d) of this title (relating to Filing of Pleadings, Documents and Other materials).

(h) Electronic filing standards. In addition to the hard copy filings required by subsection (g) of this section, any [Any] document may be filed, and all documents containing more than ten pages shall be filed, electronically in accordance with the requirements of paragraphs (1) - (3) [(8)] of this subsection. Electronic filings are registered by submission of the relevant electronic documents via [diskette or] the internet[;] in accordance with transfer standards available in the commission's central records office or on the commission's website. Alternatively, electronic filings may be registered by submission of a physical medium that is acceptable to the commission, is prepared in accordance with submission standards available in the commission's central records office or on the commission's website, and contains the relevant electronic documents. The commission will maintain a list of acceptable physical media on its website. [World Wide Web site, and the submission of the required number of paper copies to the filing clerk under the provisions of this section and §22.71 of this title (relating to Filing of Pleadings, Documents and Other materials)-]

(1) (No change.)

~~[(2) Oversized documents shall not be filed in electronic media, but shall be filed as referenced attachments.-]~~

~~(2) [(3)] Each document that has five or more headings and/or subheadings shall have a table of contents that lists the major sections of the document, the page number(s) [numbers] for each major section and the name of the electronic file that contains each major section of the document. Discovery responses are exempt from this paragraph.~~

~~[(4) Each document shall have a list of file names that are included in the filing and shall be referenced in an ASCII text file.-]~~

~~[(5) The table of contents and list of file names shall be placed at the beginning of the document.-]~~

~~[(6) Each diskette shall be labeled with the control number, if known, and the name of the person submitting the document.-]~~

~~(3) [(7)] Any information submitted under claim of confidentiality shall [should] not be submitted in electronic format.~~

~~[(i) Disk format standards. Each document that is submitted to the filing clerk on diskette shall be submitted as set forth in paragraphs (1)-(3) of this subsection.-]~~

~~[(1) 3.5 inch diskette.-]~~

~~[(2) 1.44 M double sided, high density storage capacity.-]~~

~~[(3) IBM format.-]~~

~~(i) [(j)] File format standards.~~

~~(1) Electronic filings shall be made in accordance with the current list of preferred file formats available in the commission's central records office and on the commission's World Wide Web site.~~

~~(2) Electronic filings shall be made using the native file format used to create and edit the file, unless the native file format is not on the current list of preferred file formats maintained by the commission pursuant to paragraph (1) of this subsection. Microsoft Excel spreadsheets shall have active links and formulas that were used to create and manipulate the data in the spreadsheet. An application that fails to include the native file filings is materially deficient.~~

~~(3) [(2)] Electronic filings that are submitted in a format other than that required by paragraph (1) of this subsection will not be accepted until after successful conversion of the file to a commission standard.~~

~~(j) Electronic reports. The commission may allow reports to be submitted on the commission's website.~~

~~(1) If a report is submitted on the commission's website pursuant to this subsection, it is exempt from §22.71(b) of this title and therefore does not have to be filed with the commission's filing clerk.~~

~~(2) The commission will maintain a list of reports that may be submitted on the commission's website pursuant to this subsection. This list will be available on the commission's website.~~

~~(3) A report submitted pursuant to this subsection shall be formatted and submitted in accordance with the standards and procedures applicable to that report, as listed on the commission's website.~~

~~(k) Map filing standards.~~

~~(1) If a hard copy of a map is filed in response to a requirement contained in Chapter 24 of this title, it shall be filed in its original size. It shall not be reduced or enlarged.~~

~~(2) If digital mapping data is filed, it shall be filed using an industry standard file format acceptable to the commission containing~~

feature class subcomponents of a geodatabase and capable of being manipulated by commission mapping staff. The commission will maintain a list of acceptable formats on its website.

(3) Digital mapping data shall be filed electronically pursuant to subsection (h) of this section and shall be submitted on a physical medium capable of holding digital data and acceptable to the commission. The commission will maintain a list of acceptable media on its website. The physical medium described in this paragraph shall contain digital mapping data that conforms with the requirements of paragraph (2) of this subsection and graphic versions of any hard copy maps filed pursuant to paragraph (1) of this subsection.

(4) Copies of physical maps and physical media containing digital mapping data shall be filed in conformance with §22.71(c) of this title.

§22.73. *General Requirements for Applications.*

In addition to the requirements of form specified in §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission), all applications shall contain the following, unless otherwise required by statute or commission rule:

(1) - (5) (No change.)

(6) any other matter required by statute or rule; ~~and~~

(7) a certificate of service; ~~and~~[-]

(8) the name of a person upon whom service may be had and, unless such person has filed a statement under §22.106 of this title (relating to Statement of No Access), an electronic mail address at which the person can be served.

§22.74. *Service of Pleadings and Documents.*

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

(c) Alternative methods of service. On motion of a party or the presiding officer's own motion, the presiding officer may require service by electronic mail or service by filing with or without notice, or a combination of service by either or both of those methods and any method specified in subsection (b) of this section. On joint or separate motion of all parties to a proceeding, the presiding officer shall require service by electronic mail or service by notice of filing.

(1) If a person has filed a statement of no access under §22.106 of this title (relating to Statement of No Access), the presiding officer shall require service on such person(s) by a method specified in subsection (b) of this section.

(2) A party or representative of a party that has filed a statement of no access but that is required by §22.106(b) of this title to subsequently provide an electronic mail address will thereafter be subject to service by an alternative method if the presiding officer has required service by an alternative method.

(3) Upon motion and for good cause shown, the presiding officer may require service by a method specified in subsection (b) of this section for any party in a proceeding.

(4) Service by electronic mail shall be complete upon sending an electronic mail message with the pleading or document attached to the message to the electronic mail address provided by the party being served.

(5) Service by filing with notice shall be complete upon sending an electronic mail message that contains a link to the electronic copy of the pleading or document that is accessible through the interchange on the commission's website to the electronic mail address provided by the party being served.

(6) Service by filing without notice shall be complete upon filing with the Central Records Division. If this method of service is chosen, the presiding officer shall encourage parties to sign up with the commission's Filings Notification System on its website to receive automatic notifications of filings in the docket.

(d) ~~[(e)]~~ Evidence of service. A return receipt or affidavit of any person having personal knowledge of the facts shall be prima facie evidence of the facts shown thereon relating to service. A party may present other evidence to demonstrate facts relating to service.

(e) ~~[(d)]~~ Certificate of service. Every document required to be served on all parties pursuant to subsection (a) of this section shall contain the following or similar certificate of service: "I, (name) (title) certify that a copy of this document was served on all parties of record in this proceeding on (date) in the following manner: (specify method(s) ~~[method]~~). Signed, (signature)." The list of the names and addresses of the parties on whom the document was served~~[-]~~ should not be appended to the document.

§22.75. *Examination and Correction of Pleadings and Documents.*

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

(d) Notice of material deficiencies in applications for certificates of convenience and necessity for electric transmission lines.

(1) Motions to find an application for certificate of convenience and necessity for electric transmission line materially deficient shall be filed no later than 21 days after an application is filed. Such motions shall specify the nature of the deficiency and the relevant portions of the application, and cite the particular requirement with which the application is alleged not to comply. The applicant's response to a motion to find an application for certificate of convenience and necessity for electric transmission line materially deficient shall be filed no later than five working days after such motion is received.

(2) If, within 35 days after filing of an application for certificate of convenience and necessity for electric transmission line, the presiding officer has not issued a written order concluding that material deficiencies exist in the application, the application shall be deemed sufficient.

(3) (No change.)

(4) For an application for certificate of convenience and necessity filed pursuant to PURA [Public Utility Regulatory Act] §39.203(e), a pleading alleging a material deficiency in the application shall be filed no later than 14 days after the application is filed, and shall be served on the applicant by hand delivery, facsimile transmission, or overnight courier delivery and on the other parties pursuant to §22.74(b) of this title (relating to Service of Pleadings and Documents). The applicant shall reply to a pleading alleging a material deficiency no later than seven days after it is received. If the presiding officer determines that a material deficiency exists in an application, the presiding officer shall issue a written order within 28 days of the filing of the application ordering the applicant to amend its application and correct the deficiency within seven days. This order shall be served on the applicant by hand delivery, facsimile transmission, or overnight courier delivery and on the other parties pursuant to §22.74(b) of this title. If the applicant does not timely amend its application and correct the deficiency, the presiding officer shall dismiss the application without prejudice.

(e) (No change.)

§22.76. *Amended Pleadings.*

(a) Filing amended pleadings.

(1) Any pleading may be amended at any time before notice of the docket as required by §22.51 of this title (relating to No-

tice for Public Utility Regulatory Act, Chapter 36, Subchapters C-E; Chapter 51, §51.009; and Chapter 53, Subchapter C-E, Proceedings) and §22.52 of this title (relating to Notice in Licensing Proceedings) is given.

(2) - (4) (No change.)

(b) (No change.)

§22.78. *Responsive Pleadings and Emergency Action.*

(a) (No change.)

(b) Responses to complaints. Unless otherwise specified by statute, by this chapter, or by order of the presiding officer, responsive pleadings to complaints filed to initiate a proceeding shall be filed within 21 days of the receipt of the complaint. This subsection does not apply to complaints filed pursuant to PURA, Chapter 36, Subchapter D or Chapter 53, Subchapter D, or for a complaint filed pursuant to TWC §13.004 (relating to Jurisdiction of Utility Commission Over Certain Water Supply or Sewer Service Corporations).

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

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SUBCHAPTER F. PARTIES

16 TAC §§22.101, 22.103, 22.104

The amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (West 2007 and Supp. 2015) (PURA) and under the Texas Water Code Annotated §13.041(b) (West 2008 & Supp. 2015) (TWC), which provide the Public Utility 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.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052 and TWC §13.041(b).

§22.101. *Representative Appearances.*

(a) (No change.)

(b) Change in authorized representative. Any person appearing through an authorized representative shall provide written notification to the commission and all parties to the proceeding of any change in that person's authorized representative. The required number of copies of the notification shall be filed in Central Records under the control number(s) for each affected proceeding and shall include the authorized representative's name, address, telephone number, [and] facsimile number, and, unless the authorized representative has filed a statement under §22.106 of this title (relating to Statement of No Access), an electronic mail address.

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

§22.103. *Standing to Intervene.*

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

(c) Dispute resolution pursuant to the Federal Telecommunications Act of 1996 (FTA96). Standing to intervene in proceedings concerning dispute resolution and approval of agreements pursuant to the commission's authority under FTA96 is subject to the requirements of Subchapter D of Chapter 21 of this title [~~Subchapter P of this chapter~~] (relating to Dispute Resolution).

(d) By requesting to intervene in a proceeding, a person agrees to accept delivery by electronic mail from the commission of any motions for rehearing and replies to motions for rehearing, unless he or she has filed a statement under §22.106 of this title (relating to Statement of No Access).

§22.104. *Motions to Intervene.*

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

(d) Late intervention.

(1) - (4) (No change.)

(5) Late intervention after Proposal for Decision (PFD) or Proposed Order (PO) issued. For late interventions, other than those pursuant to paragraph (4) of this subsection, the procedures in subparagraphs (A) - (B) of this paragraph apply:

(A) Agenda ballot. Upon receipt of a motion to intervene after the PFD or PO has been issued, the Commission Advising and Docket Management [~~Policy Development~~] Division shall send separate ballots to each commissioner to determine whether the motion to intervene will be considered at an open meeting. An affirmative vote by one commissioner is required for consideration of a motion to intervene at an open meeting. The Commission Advising and Docket Management [~~Policy Development~~] Division shall notify the parties by letter whether a commissioner by individual ballot has added the motion to intervene to an open meeting agenda, but will not identify the requesting commissioner(s).

(B) (No change.)

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16 TAC §22.106

The new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (West 2007 and Supp. 2015) (PURA) and under the Texas Water Code Annotated §13.041(b) (West 2008 & Supp. 2015) (TWC), which provide the Public Utility 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.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052 and TWC §13.041(b).

§22.106. *Statement of No Access.*

(a) Statement of no access. If a person or representative of a person has no access to the internet or to electronic mail, his or her motion to intervene shall include a signed statement that:

(1) he or she has no access to the internet or to electronic mail; and

(2) if circumstances change such that the person or representative gains access to the internet or to electronic mail, he or she agrees to:

(A) promptly notify the commission in writing;

(B) provide the commission with his or her electronic mail address; and

(C) become subject to the commission rules governing service by electronic mail for those who have not provided a statement of no access.

(b) Subsequent access. If a person who has provided the commission with a statement of no access pursuant to subsection (a) of this section subsequently obtains access to the internet or to electronic mail, he or she must provide an electronic mail address to the commission and will become subject to the commission rules governing service by electronic mail for those who have not provided a statement of no access.

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SUBCHAPTER G. PREHEARING PROCEEDINGS

16 TAC §§22.125 - 22.127

The amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (West 2007 and Supp. 2015) (PURA) and under the Texas Water Code Annotated §13.041(b) (West 2008 & Supp. 2015) (TWC), which provide the Public Utility 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.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052 and TWC §13.041(b).

§22.125. *Interim Relief.*

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

(d) Standard and burden of proof. In [Pursuant to PURA §36.006 or §53.006, in] any proceeding involving a proposed interim change in rates, the burden of proof to show that the change proposed by the utility or existing rate is just and reasonable shall be on the utility.

(e) (No change.)

§22.126. *Bonded Rates.*

During the pendency of its rate proceeding, a utility seeking to implement rates under bond pursuant to PURA §36.110 or §53.110 or pursuant to TWC §13.187 or §13.1871 shall file the required number of copies of its application for approval of bond at least two weeks prior to the date the bonded rates are to be effective. The application shall conform to the requirements of Subchapter E[5] of this chapter (relating to Pleadings). The bond shall be in an amount equal to or greater than one-sixth of the annual difference between the utility's current rates and the bonded rates. The bond must be approved by the Commission Advising and Docket Management [Policy Development] Division as to sufficiency based on the commission staff's review of the utility's application. Any decision by the Commission Advising and Docket Management [Policy Development] Division either approving or disapproving a bond is appealable to the commission pursuant to §22.123 of this title (relating to Appeal of an Interim Order and Motions for Reconsideration of Interim Order Issued by the Commission).

§22.127. *Certification of an Issue to the Commission.*

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

(c) Procedure for certification. The presiding officer shall submit the certified issue to the Commission Advising and Docket Management [Policy Development] Division. The Commission Advising and Docket Management [Policy Development] Division shall place the certified issue on the commission's agenda to be considered at the earliest time practicable that is not earlier than 20 days after its submission. Parties may file briefs on the certified issue within 13 days of its submission. The presiding officer may abate the proceeding while a certified issue is pending.

(d) (No change.)

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SUBCHAPTER H. DISCOVERY PROCEDURES

16 TAC §22.141

The amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (West 2007 and Supp. 2015) (PURA) and under the Texas Water Code Annotated §13.041(b) (West 2008 & Supp. 2015) (TWC), which provide the Public Utility 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.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052 and TWC §13.041(b).

§22.141. *Forms and Scope of Discovery.*

(a) Scope. Parties may obtain discovery regarding any matter, not privileged or exempted under the Texas Rules of Civil Evidence, the Texas Rules of Civil Procedure, or other law or rule, that is relevant

to the subject matter in the proceeding. Discoverable matters include the existence, description, nature, custody, condition, location and contents of any documents, including papers, books, accounts, drawings, graphs, charts, photographs, maps, electronic mail, audio [electronic] or video [videotape] recordings, and any other data compilations from which information can be obtained and translated, if necessary, by the person from whom information is sought, into reasonably usable form, and any other tangible things which constitute or contain matters relevant to the subject matter in the action, and the identity and location of persons having any knowledge of any discoverable matter. Discovery is not limited to tangible things, but may extend to knowledge, mental impressions, and opinions of persons who will testify; explanations of documents or tangible things, or information contained therein; and other relevant information within the knowledge or control of the entity from whom discovery is sought. A person is not required to produce a document or tangible thing unless it is within that person's constructive or actual possession, custody, or control. A person has possession, custody or control of a document or tangible thing as long as the person has a superior right to compel the production from a third party and can obtain possession of the document or tangible thing with reasonable effort.

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

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SUBCHAPTER J. SUMMARY PROCEEDINGS

16 TAC §22.183

The amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (West 2007 and Supp. 2015) (PURA) and under the Texas Water Code Annotated §13.041(b) (West 2008 & Supp. 2015) (TWC), which provide the Public Utility 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.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052 and TWC §13.041(b).

§22.183. *Disposition by Default.*

(a) Default. A default occurs when a party who does not have the burden of proof fails to appear for a hearing or request a hearing within 30 days after service of notice of an opportunity for a hearing.

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

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SUBCHAPTER L. EVIDENCE AND EXHIBITS IN CONTESTED CASES

16 TAC §22.225, §22.226

The amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (West 2007 and Supp. 2015) (PURA) and under the Texas Water Code Annotated §13.041(b) (West 2008 & Supp. 2015) (TWC), which provide the Public Utility 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.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052 and TWC §13.041(b).

§22.225. *Written Testimony and Accompanying Exhibits.*

(a) Prefiling of testimony, exhibits, and objections.

(1) - (5) (No change.)

(6) The testimony pre-filing schedule in a major rate proceeding [Public Utility Regulatory Act, Chapter 36, Subchapter C or E, or Chapter 53, Subchapter C or E rate proceeding] shall be established as set out in this subsection.

(A) - (C) (No change.)

(7) For electric and telecommunication rate proceedings, the [The] presiding officer shall establish a pre-filing schedule for PURA [Public Utility Regulatory Act,] Chapter 36, Subchapter D or Chapter 53, Subchapter D rate cases and for cases other than major rate proceedings. In proceedings that are not major rate proceedings, notice of intent proceedings, applications for certificates of convenience and necessity for new generating plant, or applications for fuel reconciliations, the applicant is not required to prefile written testimony and exhibits at the time the filing is made unless otherwise required by statute or rule.

(8) For all water and sewer matters filed pursuant to TWC Chapters 12 or 13, except for a major rate proceeding, the presiding officer shall establish a pre-filing schedule. The applicant is not required to prefile written testimony and exhibits at the time the filing is made unless otherwise required by statute or rule.

(9) [(8)] Utilities filing an application for construction of a transmission facility that has been designated by the Electric Reliability Council of Texas (ERCOT) independent system operator as critical to the reliability of the ERCOT system and to be considered on an expedited basis, shall file written testimony and exhibits supporting its direct case on the same date that the application is filed with the commission. This requirement shall also apply to transmission lines located in other reliability councils or administered by other independent system operators provided such councils have a process for designation of critical transmission lines.

(10) [(9)] The times for pre-filing set out in this section may be modified upon a showing of good cause.

(11) [(10)] Late-filed testimony may be admitted into evidence if the testimony is necessary for a full disclosure of the facts and

admission of the testimony into evidence would not be unduly prejudicial to the legal rights of any party. A party that intends to offer late-filed testimony into evidence shall, at the earliest opportunity, inform the presiding officer, who shall establish reasonable procedures and deadlines regarding such testimony.

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

§22.226. *Exhibits.*

(a) Form. Exhibits, other than maps, to be offered in evidence at a hearing shall be of a size which will not unduly encumber the record. Whenever practicable, exhibits shall conform to the size requirements established by §22.72 of this title (relating to Formal Requirements of Pleadings and Documents to be Filed with the Commission). The pages of each exhibit shall be consecutively numbered.

(b) - (d) (No change.)

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SUBCHAPTER M. PROCEDURES AND FILING REQUIREMENTS IN PARTICULAR COMMISSION PROCEEDINGS

16 TAC §§22.242 - 22.244, 22.246

The amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (West 2007 and Supp. 2015) (PURA) and under the Texas Water Code Annotated §13.041(b) (West 2008 & Supp. 2015) (TWC), which provide the Public Utility 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.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052 and TWC §13.041(b).

§22.242. *Complaints.*

(a) Records of complaints. Any affected person may complain to the commission, either in writing or by telephone, setting forth any act or thing done or omitted to be done by any person under the jurisdiction of the commission [electric utility or telecommunications utility] in violation or claimed violation of any law which the commission has jurisdiction to administer or of any order, ordinance, rule, or regulation of the commission. The commission staff may request a complaint made by telephone be put in writing if necessary to complete investigation of the complaint. The commission shall keep information about each complaint filed with the commission. The commission shall retain the information pursuant to the agency's records retention schedule as approved by the Texas State Library and Archives Commission. The information shall include:

(1) - (6) (No change.)

(b) (No change.)

(c) Informal resolution required in certain cases. A person who is aggrieved by the conduct of a person under the jurisdiction of the commission [an electric utility or telecommunications utility] or other person must present a complaint to the commission for informal resolution before presenting the complaint to the commission.

(1) Exceptions. A complainant may present a formal complaint to the commission, without first referring the complaint for informal resolution, if:

(A) - (B) (No change.)

(C) the complaint is filed by a person alleging that an electric utility or a telecommunications utility has engaged in anti-competitive practices; [ø]

(D) the complaint has been the subject of a complaint proceeding conducted by a city;[-]

(E) the complaint is filed by a person alleging that a water or sewer utility has abandoned the service of the utility; or

(F) the complaint is filed by a person alleging that a wholesale water or sewer provider has discontinued, reduced, or impaired its wholesale water or sewer service to its customers for reasons other than those specified in §24.88 of this title (relating to Discontinuance of Service).

(2) (No change.)

(d) (No change.)

(e) Formal Complaint. If an attempt at informal resolution fails, or is not required under subsection (c) of this section, the complainant may present a formal complaint to the commission.

(1) Requirement to present complaint concerning electric, water, or sewer utility to a city. If a person receives electric, water, or sewer utility service or has applied to receive electric, water, or sewer utility service within the limits of a city that has original jurisdiction over the electric, water, or sewer utility providing service or requested to provide service, the person must present any complaint concerning the electric, water, or sewer utility to the city before presenting the complaint to the commission.

(A) - (B) (No change.)

(2) The commission staff may permit a complainant to cure any deficiencies under this subsection and may waive any of the requirements of this subsection for good cause, if the waiver will not materially affect the rights of any other party. A formal complaint shall include the following information:

(A) - (B) (No change.)

(C) the address, telephone number, and facsimile transmission number, if available, and, unless the person has filed a statement under §22.106 of this title (relating to Statement of No Access), the electronic mail address of the complainant or the complainant's representative;

(D) the name of the person under the jurisdiction of the commission [electric utility or telecommunications utility] or other person against whom the complainant is seeking relief;

(E) if the complainant is seeking relief against an electric, water, or sewer utility, a statement of whether the complaint relates to service that the complainant is receiving within the limits of a city;

(F) if the complainant is seeking relief against an electric, water, or sewer utility within the limits of a city, a description of any complaint proceedings conducted by the city, including the outcome of those proceedings;

(G) - (I) (No change.)

(f) - (g) (No change.)

(h) Continuation of service during processing of complaint. In any case in which a formal complaint has been filed and an allegation is made that a person under the jurisdiction of the commission [an electric utility or a telecommunications utility] or other person is threatening to discontinue a customer's service, the presiding officer may, after notice and opportunity for hearing, issue an order requiring the person under the jurisdiction of the commission [electric utility or telecommunications utility] or other person to continue to provide service during the processing of the complaint. The presiding officer may issue such an order for good cause, on such terms as may be reasonable to preserve the rights of the parties during the processing of the complaint.

(i) List of cities without regulatory authority. The commission shall maintain and make available to the public a list of the municipalities that do not have exclusive original jurisdiction over all electric rates, operations, and services provided by an electric utility within its city or town limits and a list of the municipalities that have surrendered to the commission original jurisdiction over the rates charged by a utility for retail water or sewer service within the corporate boundaries of the municipality.

§22.243. Electric or Telecommunication Rate Change Proceedings.

(a) Statements of intent. No electric utility or public utility, other than an electric cooperative that has elected to be exempt from rate regulation under PURA [the Public Utility Regulatory Act,] Chapter 36, may make changes in its rates except by filing a statement of intent with the regulatory authority having original jurisdiction at least 35 days prior to the effective date of the proposed change. The statement of intent shall include proposed revisions of tariffs and schedules and a statement specifying in detail each proposed change, the effect the proposed change is expected to have on the revenues of the electric utility or public utility, the effective date of the proposed rate change, the classes and numbers of utility ratepayers affected, and a description of the service for which a change is requested. For major rate proceedings, the expected change in revenues must be expressed as an annual dollar increase over adjusted test year revenues and as a percent increase over adjusted test year revenues.

(b) Rate filing package. Any electric utility or public utility filing a statement of intent to change its rates in a major rate proceeding under PURA [the Public Utility Regulatory Act (PURA),] Chapter 36, Subchapter C or Chapter 53, Subchapter C shall file a rate filing package and supporting workpapers as required by the commission's current rate filing package at the same time it files a statement of intent. The rate filing package shall be securely bound under cover, and shall include all information required by the commission's rate filing package form in the format specified. Examination for sufficiency and correction of deficiencies in rate filing packages is [are] governed by §22.75 of this title (relating to Examination and Correction of Pleadings and Documents).

(c) (No change.)

§22.244. Review of Municipal Electric Rate Actions.

(a) Contents of petitions. In addition to any information required by statute, petitions for review of municipal rate actions filed pursuant to PURA [the Public Utility Regulatory Act (PURA)] §33.052 or §§33.101 - 33.104 shall contain the original petition for review with the required signatures and following additional information.

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

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

(d) Verification of petition. Unless otherwise provided by order of the presiding officer, the following procedures shall be followed to verify petitions appealing municipal rate actions filed pursuant to PURA §33.052 and §§33.101 - 33.104.

(1) Within 15 days of the filing of an appeal of a municipal rate action, the Commission Advising and Docket Management [Policy Development] Division shall send a copy of the petition to the respondent municipality with a directive that the municipality verify the signatures on the petition.

(2) Within 30 days after receipt of the petition from the Commission Advising and Docket Management [Policy Development] Division, the municipality shall file with the commission a statement of review, together with a supporting written affidavit sworn to by a municipal official.

(3) - (5) (No change.)

(e) (No change.)

§22.246. Administrative Penalties.

(a) (No change.)

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

(1) - (4) (No change.)

(5) Violation--Any activity or conduct prohibited by PURA, the TWC [the Public Utility Regulatory Act (PURA)], commission rule, or commission order.

(6) (No change.)

(c) Amount of administrative penalty for violations of PURA or a rule or order adopted under PURA.

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

(d) Amount of administrative penalty for violations of the TWC or a rule or order adopted under Chapter 13 of the TWC.

(1) Each day a violation continues may be considered a separate violation for which an administrative penalty can be levied, regardless of the status of any administrative procedures that are initiated under this subsection.

(2) The administrative penalty for each separate violation may be in an amount not to exceed \$5,000 per day.

(3) The amount of the penalty shall be based on:

(A) the nature, circumstances, extent, duration, and gravity of the prohibited acts or omissions;

(B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;

(C) the demonstrated good faith, including actions taken by the person, affiliated interest, or entity to correct the cause of the violation;

(D) any economic benefit gained through the violations;

(E) the amount necessary to deter future violations; and

(F) any other matters that justice requires.

(e) [(d)] Initiation of investigation. Upon receiving an allegation of a violation or of a continuing violation, the executive director shall determine whether an investigation should be initiated.

(f) [(e)] Report of violation or continuing violation. If, based on the investigation undertaken pursuant to subsection (e) [(d)] of this section, the executive director determines that a violation or a continuing violation has occurred, the executive director may issue a report to the commission.

(1) Contents of the report. The report shall state the facts on which the determination is based and a recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the administrative penalty and, if applicable pursuant to §25.503 of this title, a recommendation that excess revenue be disgorged.

(2) Notice of report.

(A) Within 14 days after the report is issued, the executive director shall, by certified mail, return receipt requested, give written notice of the report to the person who is alleged to have committed the violation or continuing violation which is the subject of the report.

(B) For violations of the TWC or a rule or order adopted under Chapter 13 of the TWC, within ten days after the report is issued, the executive director shall, by certified mail, return receipt requested, give written notice of the report to the person who is alleged to have committed the violation or continuing violation which is the subject of the report.

(C) The notice must include:

(i) [(A)] a brief summary of the alleged violation or continuing violation;

(ii) [(B)] a statement of the amount of the recommended administrative penalty;

(iii) [(C)] a statement recommending disgorgement of excess revenue, if applicable, pursuant to §25.503 of this title;

(iv) [(D)] a statement that the person who is alleged to have committed the violation or continuing violation has a right to a hearing on the occurrence of the violation or continuing violation, the amount of the administrative penalty, or both the occurrence of the violation or continuing violation and the amount of the administrative penalty;

(v) [(E)] a copy of the report issued to the commission pursuant to this subsection; and

(vi) [(F)] a copy of this section, §22.246 of this title (relating to Administrative Penalties).

(g) [(F)] Options for response to notice of violation or continuing violation.

(1) Opportunity to remedy.

(A) This paragraph does not apply to a violation of PURA Chapters 17, 55, or 64, or Chapter 13 of the TWC, or of a commission rule or commission order pursuant to those chapters.

(B) Within 40 days of the date of receipt of a notice of violation set out in subsection (f)(2) [(e)(2)] of this section, the person against whom the administrative penalty or disgorgement may be assessed may file with the commission proof that the alleged violation has been remedied and that the alleged violation was accidental or inadvertent. A person who claims to have remedied an alleged violation has the burden of proving to the commission both that an alleged violation was remedied before the 31st day after the date the person received the report of violation and that the alleged violation was accidental or inadvertent. Proof that an alleged violation has been remedied and that the alleged violation was accidental or inadvertent shall be evidenced in writing, under oath, and supported by necessary documentation.

(C) If the executive director determines that the alleged violation has been remedied, was remedied within 30 days, and that the alleged violation was accidental or inadvertent, no administrative penalty will be assessed against the person who is alleged to have committed the violation.

(D) If the executive director determines that the alleged violation was not remedied or was not accidental or inadvertent, the executive director shall make a determination as to what further proceedings are necessary.

(E) If the executive director determines that the alleged violation is a continuing violation, the executive director shall institute further proceedings, including referral of the matter for hearing pursuant to subsection (i) [(h)] of this section.

(2) Payment of administrative penalty and/or disgorged excess revenue. Within 20 [30] days after the date the person receives the notice set out in subsection (f)(2) [(e)(2)] of this section, the person may accept the determination and recommended administrative penalty and, if applicable, the recommended excess revenue to be disgorged through a written statement sent to the executive director. If this option is selected, the person shall take all corrective action required by the commission. The commission by written order shall approve the determination and impose the recommended administrative penalty and, if applicable, recommended disgorged excess revenue.

(3) Request for hearing. Not later than the 20th day after the date the person receives the notice set out in subsection (f)(2) [(e)(2)] of this section, the person may submit to the executive director a written request for a hearing on any or all of the following:

(A) the occurrence of the violation or continuing violation;

(B) the amount of the administrative penalty; and

(C) the amount of disgorged excess revenue, if applicable.

(h) [(g)] Settlement conference. A settlement conference may be requested by any party to discuss the occurrence of the violation or continuing violation, the amount of the administrative penalty, disgorged excess revenue[,] if applicable, and the possibility of reaching a settlement prior to hearing. A settlement conference is not subject to the Texas Rules of Evidence or the Texas Rules of Civil Procedure; however, the discussions are subject to Texas Rules of Civil Evidence 408, concerning compromise and offers to compromise.

(1) If a settlement is reached:

(A) the parties shall file a report with the executive director setting forth the factual basis for the settlement;

(B) the executive director shall issue the report of settlement to the commission; and

(C) the commission by written order will approve the settlement.

(2) If a settlement is reached after the matter has been referred to SOAH, the matter shall be returned to the commission. If the settlement is approved, the commission shall issue an order memorializing commission approval and setting forth commission orders associated with the settlement agreement.

(i) [(h)] Hearing. If a person requests a hearing under subsection (g)(3) [(f)(3)] of this section, or fails to respond timely to the notice of the report of violation or continuing violation provided pursuant to subsection (f)(2) [(e)(2)] of this section, or if the executive director determines that further proceedings are necessary, the executive director

shall set a hearing, provide notice of the hearing to the person, and refer the case to SOAH pursuant to §22.207 of this title (relating to Referral to State Office of Administrative Hearings). For violations of the TWC or a rule or order adopted under Chapter 13 of the TWC, if the person charged with the violation fails to timely respond to the notice, the commission by order shall assess the recommended penalty or order a hearing to be held on the findings and recommendations in the report. If the commission orders a hearing or the executive director sets a hearing, the [The] case shall then proceed as set forth in paragraphs (1) - (5) of this subsection.

(1) The commission shall provide the SOAH administrative law judge a list of issues or areas that must be addressed.

(2) The hearing shall be conducted in accordance with the provisions of this chapter.

(3) The SOAH administrative law judge shall promptly issue to the commission a proposal for decision, including findings of fact and conclusions of law, about:

(A) the occurrence of the alleged violation or continuing violation;

(B) whether the alleged violation was cured and was accidental or inadvertent for a violation of any chapter other than PURA Chapters 17, 55, or 64, ~~or~~ of a commission rule or commission order pursuant to those chapters; or of Chapter 13 of the TWC; and

(C) the amount of the proposed administrative penalty and, if applicable, disgorged excess revenue.

(4) Based on the SOAH administrative law judge's proposal for decision, the commission may:

(A) determine that a violation or continuing violation has occurred and impose an administrative penalty and, if applicable, disgorged excess revenue;

(B) if applicable, determine that a violation occurred but that, pursuant to subsection (g)(1) ~~(f)(1)~~ of this section, the person remedied the violation within 30 days and proved that the violation was accidental or inadvertent, and that no administrative penalty will be imposed; or

(C) determine that no violation or continuing violation has occurred.

(5) Notice of the commission's order issued pursuant to paragraph (4) of this subsection shall be provided under the Government Code, Chapter 2001 and §22.263 of this title (relating to Final Orders) and shall include a statement that the person has a right to judicial review of the order.

(j) ~~(f)~~ Parties to a proceeding. The parties to a proceeding under Subchapter A of Chapter 15 of PURA relating to administrative penalties or disgorgement of excess revenue shall be limited to the person who is alleged to have committed the violation or continuing violation and the commission, including the independent market monitor. This does not apply to a subsequent proceeding under subsection (k) ~~(f)~~ of this section.

(k) ~~(f)~~ Distribution of Disgorged Excess Revenues. Disgorged excess revenues shall be remitted to an independent organization, as defined in PURA §39.151. The independent organization shall distribute the excess revenue to affected wholesale electric market participants in proportion to their load during the intervals when the violation occurred to be used to reduce costs or fees incurred by retail electric customers. The load of any market participants that are no longer active at the time of the distribution shall be removed prior to calculating the load proportions of the affected wholesale electric

market participants that are still active. However, if the commission determines other wholesale electric market participants are affected or a different distribution method is appropriate, the commission may direct commission staff to open a subsequent proceeding to address those issues.

(1) No later than 90 days after the disgorged excess revenues are remitted to the independent organization, the monies shall be distributed to affected wholesale electric market participants active at the time of distribution, or the independent organization shall, by that date, notify the commission of the date by which the funds will be distributed. The independent organization shall include with the distributed monies a communication that explains the docket number in which the commission ordered the disgorged excess revenues, an instruction that the monies shall be used to reduce costs or fees incurred by retail electric customers, and any other information the commission orders.

(2) The commission may require any affected wholesale electric market participants receiving disgorged funds to demonstrate how the funds were used to reduce the costs or fees incurred by retail electric customers.

(3) Any affected wholesale electric market participant receiving disgorged funds that is affiliated with the person from whom the excess revenue is disgorged shall distribute all of the disgorged excess revenues directly to its retail customers and shall provide certification under oath to the commission that the entirety of the revenues were distributed to its retail electric customers.

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

Earliest possible date of adoption: July 24, 2016

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



SUBCHAPTER N. DECISION AND ORDERS

16 TAC §22.263, §22.264

The amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (West 2007 and Supp. 2015) (PURA) and under the Texas Water Code Annotated §13.041(b) (West 2008 & Supp. 2015) (TWC), which provide the Public Utility 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.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052 and TWC §13.041(b).

§22.263. *Final Orders.*

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

(d) Date That an Order is Signed. An order is signed on the date shown on the order. If a sworn motion filed under APA §2001.142(c) is granted, with or without commission action, then, regardless of the date shown on the order, the date that the commission's order is considered to be signed shall be the date specified in

that sworn motion as the date that the movant received the order or obtained actual knowledge of the order. If more than one sworn motion is granted, then the date that the commission's order is considered to be signed is the latest date specified in any such granted motions.

(e) ~~[(d)]~~ Reciprocity of Final Orders Between States. After reviewing the facts and the issues presented, a final order may be adopted by the commission even though it is inconsistent with the commission's procedural or substantive rules provided that the final order, or the portion thereof that is inconsistent with commission rules, is a final order, or a part thereof, rendered by a regulatory agency of some state other than the State of Texas and provided further that the number of customers in Texas affected by the final order is no more than the lesser of either 1,000 customers or 10% of the total number of customers of the affected utility.

§22.264. *Rehearing.*

(a) Motions for rehearing, replies thereto, and commission action on motions for rehearing shall be governed by APA. Only a party to a proceeding before the commission [who has been granted intervenor status] may file a motion for rehearing.

(b) (No change.)

(c) A motion for rehearing or a reply to a motion for rehearing is untimely if it is not filed by the deadlines specified in APA §2001.146 or, if the commission extends the time to file such motion or reply or approves a time agreed to by the parties, the date specified in the order of the commission extending time or approving the time.

(d) A motion by a party to extend time related to a motion for rehearing must be filed no less than ten days before the end of the time period that the party seeks to extend or it is untimely. Such motion must state with specificity the reasons the extension is justified.

(e) ~~[(e)]~~ Upon the filing of a timely motion for rehearing or a timely motion to extend time, the Commission Advising and Docket Management ~~[Policy Development]~~ Division shall send separate ballots to each commissioner to determine whether they will consider the motion at an open meeting. Untimely motions shall not be balloted. An affirmative vote by one commissioner is required for consideration of a ~~[the]~~ motion for rehearing or a motion to extend time at an open meeting. If no commissioner votes to add a timely motion to extend time to an open meeting for consideration, the motion is overruled ten days after the motion is filed.

(f) If the commission extends time to act on a motion for rehearing, the Commission Advising and Docket Management Division shall send separate ballots to each commissioner to determine whether they will consider the motion for rehearing at a subsequent open meeting. An affirmative vote by one commissioner is required to place the motion for rehearing on an open meeting agenda.

(g) A party that files a motion for rehearing or a reply to a motion for rehearing shall deliver a copy of the motion or reply to every other party in the case.

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

SUBCHAPTER B. RATES, RATE-MAKING, AND RATES/TARIFF CHANGES

16 TAC §24.21

The Public Utility Commission of Texas (commission) proposes amendment to §24.21, relating to Form and Filing of Tariffs. The proposed amendment will update provisions regarding minor tariff changes, pass-through clauses, and surcharges for water and sewer utilities. Project Number 45112 is assigned to this proceeding.

Ms. Debi Loockerman, CPA, Director of Water Rates Analysis in the Water Utility Regulation Division, has determined that for each year of the first five-year period the proposed section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Loockerman 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 to add clarity and simplicity to the rules governing minor tariff changes, pass-through clauses, and surcharges for water and sewer utilities. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Ms. Loockerman 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 on Tuesday, August 2, 2016. The request for a public hearing must be received by Monday, July 25, 2016.

Comments on the proposed amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by Monday, July 25, 2016. 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 by Monday, August 8, 2016. 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 45112.

This amendment is proposed under the Texas Water Code Annotated §13.041(b) (West 2008 & Supp. 2015) (TWC), which provides the Public Utility Commission with the authority to make

and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: TWC §13.041(b).

§24.21. Form and Filing of Tariffs.

(a) Approved tariff. A utility may not directly or indirectly demand, charge, or collect any rate or charge, or impose any classifications, practices, rules, or regulations different from those prescribed in its approved tariff filed with the commission or with the municipality exercising original jurisdiction over the utility, except as follows: [noted in this subsection.]

(1) A utility may charge the rates proposed under the Texas Water Code (TWC) [~~TWC~~] §13.187 or §13.1871 on or after the proposed effective date, unless the proposed effective date of the proposed rates is suspended or the regulatory authority [~~commission~~] sets interim rates.

(2) The regulatory assessment fee required in TWC §5.701(n) [~~§5.235(n)~~] does not have to be listed on the utility's approved tariff to be charged and collected but must be included in the tariff at the earliest opportunity.

(3) A person who possesses facilities used to provide retail water utility service or a utility that holds a certificate of public convenience and necessity (CCN) to provide retail water service that enters into an agreement in accordance with TWC §13.250(b)(2), may collect charges for sewer wastewater [~~services on behalf of another retail public utility on the same bill with its water charges and shall at the earliest opportunity include a notation on its tariff that it has entered into such an agreement~~].

(4) A utility may enter into a contract with a county to collect solid waste disposal fees and include those fees on the same bill with its water charges and shall at the earliest opportunity include a notation on its tariff that it has entered into such an agreement.

(b) Requirements as to size, form, identification, minor changes, and filing of tariffs.

(1) Tariffs filed with applications for CCNs [~~certificates of convenience and necessity~~].

(A) When applying to obtain or amend a CCN, or to add a new water or sewer system or subdivision to a CCN, every utility shall file its proposed tariff with the commission and any regulatory authority with original rate jurisdiction over the utility. [~~Every public utility shall file its tariff with the commission containing~~]

(i) For a utility that is under the original rate jurisdiction of the commission, the tariff shall contain schedules of all the utility's [its] rates, tolls, charges, rules, and regulations pertaining to all of its utility service(s) [service] when it applies for a CCN [~~certificate of convenience and necessity~~] to operate as a public utility. The tariff must be on the form prescribed by the commission [~~the commission prescribes~~] or another form acceptable to the commission.

(ii) For a utility under the original rate jurisdiction of a municipality, the utility must file with the commission a copy of its tariff as approved by the municipality.

(B) Unless the utility is a nonfunctioning utility, if a utility does not currently have a tariff applicable to the area subject to the CCN application (e.g., a subdivision currently being built or proposed), the utility shall file a proposed tariff with the commission. The applicant requesting the new tariff shall comply with the requirements in §24.105 of this title (relating to Contents of Certificate of Convenience and Necessity Applications).

(C) A utility that is filing a tariff for the first time after obtaining a CCN shall file a rate change application within 18 months from the date service begins in order to adjust the rates to a historic test year with the appropriate regulatory authority and to true up the new tariff rates to the historical test year. An application for a price index rate adjustment pursuant to TWC §13.1872 does not satisfy the requirements of this subparagraph.

(D) [~~(B)~~] Every water supply or sewer service corporation shall file with the commission a complete tariff containing schedules of all its rates, tolls, charges, rules, and regulations pertaining to all of its utility service(s) [service] when it applies [~~for a certificate of convenience and necessity~~] to operate as a retail public utility and to obtain or amend a CCN.

(2) Minor tariff changes. Except for an affected county, or a utility under the original rate jurisdiction of a municipality, a [public] utility's approved tariff may not be changed or amended without commission approval. Minor tariff changes shall not be allowed for any fees charged by affiliates. The addition of a new extension policy to a tariff or modification of an existing extension policy is not a minor tariff change. An affected county may change rates for retail water or sewer [wastewater] service without commission approval, but shall file a copy of the revised tariff with the commission within 30 days after the effective date of the rate change.

(A) The commission may approve the following minor changes to tariffs:

(i) service rules and policies;

(ii) changes in fees for customer deposits, meter tests, return check charges, and late charges, provided they do not exceed the maximum allowed by commission rules [~~the applicable sections~~];

[~~(iii)~~] implementation of a purchased water or sewage treatment provision; a temporary water rate provision in response to mandatory reductions in water use imposed by a court, government agency, or other authority; or water use fee provision previously approved by the commission;

[~~(iv)~~] surcharges over a time period determined to reflect the change in the actual cost to the utility for sampling costs, commission inspection fees, or as appropriate, other governmental requirements beyond the utility's control;

(iii) [~~(v)~~] addition of the regulatory assessment fee payable to the TCEQ as a separate item or to be included in the currently authorized rate;

(iv) [~~(vi)~~] addition of a provision allowing a utility to collect retail sewer service [wastewater] charges in accordance with TWC §13.250(b)(2) or §13.147(d);

(v) [~~(vii)~~] rate adjustments to implement commission-authorized [authorized] phased or multi-step rates or downward rate adjustments to reconcile rates with actual costs;

[~~(viii)~~] addition of a production fee charged by a groundwater conservation district as a separate item calculated by multiplying the customer's total consumption, including the number of gallons in the base bill, by the actual production fee per thousand gallons; or]

(vi) [~~(ix)~~] implementation of an energy cost adjustment clause pursuant to subsection (n) of this section;

(vii) implementation or modification of a pass-through provision calculation in a tariff, as provided in subparagraphs (B) - (E) of this paragraph, which is necessary for the correct

recovery of the actual charges from pass-through entities, including line loss; or

(viii) some surcharges as provided in subparagraph (F) of this paragraph.

(B) If a utility has provided proper notice as required in subparagraph (E) of this paragraph, the commission may approve a pass-through provision as a minor tariff change, even if the utility has never had an approved pass-through provision in its tariff. A pass-through provision may not be approved for a charge already included in the utility's cost of service used to calculate the rates approved by the commission in the utility's most recently approved rate change pursuant to TWC §13.187 or TWC §13.1871. A pass-through provision may only include passing through of the actual costs charged to the utility. Only the commission staff or the utility may request a hearing on a proposed pass-through provision or a proposed revision or change to a pass-through provision. A pass-through provision or provisions may be approved in the following situation(s): [The addition of an extension policy to a tariff or a change to an existing extension policy does not qualify as a minor tariff change because it must be approved or amended in a rate change application.]

(i) A utility that purchases water or sewage treatment and whose rates are under the original jurisdiction of the commission may include a provision in its tariff to pass through to its customers changes in such costs. The provision must specify how it is calculated.

(ii) A utility may pass through a temporary water rate provision implemented in response to mandatory reductions in water use imposed by a court, government agency, or other authority. The provision must specify how the temporary water rate provision is calculated.

(iii) A utility may include the addition of a production fee charged by a groundwater conservation district, including a production fee charged in accordance with a groundwater reduction plan entered in to by a utility in response to a groundwater conservation district production order or rule, as a separate line item in the tariff.

(iv) A utility may pass through the costs of changing its source of water if the source change is required by a governmental entity. The pass-through provision may not be effective prior to the date the conversion begins. The pass-through provision must be calculated using an annual true-up provision.

(v) A utility subject to more than one pass-through cost allowable in this section may request approval of an overall combined pass-through provision that includes all allowed pass-through costs to be recovered in one provision pursuant to subparagraph (C) of this paragraph. The twelve calendar months (true-up period) for inclusion in the true-up report must remain constant, e.g. January through December.

(C) A change in the combined pass-through provision may only be implemented once per year. The utility must file a true-up report within one month after the end of the true-up period. The change may be effective in a billing cycle within three months after the end of the true-up period as long as the true-up clearly shows the reconciliation between charges by pass-through entities and collections from the customers, and charges from previous years are reconciled. Only expenses charged by the pass-through provider(s) shall be included in the provision. The true-up report shall include:

(i) a list of all entities charging fees included in the combined pass-through provision, specifying any new entities added to the combined pass-through provision;

(ii) a summary of each charge passed through in the report year, along with documentation verifying the charge assessed and showing the amount the utility paid;

(iii) a comparison between annual amounts billed by all entities charging fees included in the pass-through provision with amounts billed for the usage by the utility to its customers in the pass-through period;

(iv) all calculations and supporting documentation;

(v) a summary report, by year, for the lesser of all years prior or five years prior to the pass-through period showing the same information as in clause (iii) with a reconciliation to the utility's booked numbers, if there is a difference in any year; and

(vi) any other documentation or information requested by the commission.

(D) For any pass-through provision granted under this section, all charges approved for recovery of pass-through costs shall be stated separately from all charges by the utility to recover the revenue requirement. Except for a combined pass-through provision, the calculation for a pass-through gallonage rate for a utility with one source of water may be made using the following equation, which is provided as an example: $G + \{G/(1-L)\}$, where G equals the new gallonage charge by source supplier and L equals the line loss reflected as a percentage expressed in decimal format (for example, 8.5% would be expressed as 0.085).

(E) A utility that wishes to revise or implement an approved pass-through provision shall take the following actions prior to the beginning of the billing period in which the revision takes effect:

(i) submit a written notice to the commission that shall include:

(I) the affected CCN number(s),

(II) a list of the affected subdivision(s), public water system name(s) and corresponding number(s) issued by the TCEQ, and the water quality system name(s) and corresponding number(s) issued by the TCEQ, if applicable,

(III) a copy of the notice to the customers,

(IV) documentation supporting the stated amounts of any new or modified pass-through costs,

(V) historical documentation of line loss for one year,

(VI) all calculations and assumptions for any true-up of pass-through costs,

(VII) the calculations and assumptions used to determine the new rates, and

(VIII) a copy of the pages of the utility's tariff that contain the rates that will change if the utility's application is approved, and

(ii) e-mail (if the customer has agreed to receive communications electronically), mail, or hand-deliver notice to the utility's customers. Notice may be in the form of a billing insert and must contain:

(I) the effective date of the change,

(II) the present calculation of customer billings,

(III) the new calculation of customer billings,

(IV) an explanation of any corrections to the pass-through formula, if applicable,

(V) the change in charges to the utility for purchased water or sewer treatment or ground water reduction fee or subsidence, if applicable, and

(VI) the following language: "This tariff change is being implemented in accordance with the minor tariff changes allowed by 16 Texas Administrative Code §24.21. The cost to you as a result of this change will not exceed the costs charged to your utility."

(F) The following provisions apply to surcharges:

(i) A surcharge is an authorized rate to collect revenues over and above the usual cost of service.

(ii) If authorized by the commission or the municipality exercising original jurisdiction over the utility, a surcharge to recover the actual increase in costs to the utility may be collected over a specifically authorized time period without being listed on the approved tariff for:

(I) sampling fees not already recovered by rates;

(II) inspection fees not already recovered by rates;

(III) production fees or connection fees not already recovered by rates charged by a groundwater conservation district; or

(IV) other governmental requirements beyond the control of the utility.

(iii) A utility shall use the revenues collected pursuant to a surcharge approved by the commission only for the purposes noted in the order approving the surcharge. A utility shall handle the funds in the manner specified in the order approving the surcharge. The utility may redirect or use the revenues for other purposes only after first obtaining the approval of the commission.

(iv) The commission may require a utility to file periodic and/or final accounting information to show the collection and disbursement of funds collected through an approved surcharge.

(3) Tariff revisions and tariffs filed with rate changes.

(A) If the commission is the regulatory authority, the [The] utility shall file its revisions [revision] with the commission. [Each revision must be accompanied by a cover page that contains a list of pages being revised, a statement describing each change, its effect if it is a change in an existing rate, and a statement as to impact on rates of the change by customer class, if any.] If a proposed tariff revision constitutes an increase in existing rates of a particular customer class or classes, then the commission may require that notice be given.

(B) Each revision must be accompanied by a copy of the original tariff and a red-lined copy of the proposed tariff revisions clearly showing the proposed changes. [Symbols for changes: Each proposed tariff sheet accompanying an application filed pursuant to TWC §13.187 or §13.1871 shall contain notations in the right-hand margin indicating each change made on the sheets. Notations to be used are: (C) to denote a change in regulations; (D) to denote discontinued rates or regulations; (E) to denote the correction of an error made during a revision (the revision which resulted in the error must be one connected to some material contained in the tariff prior to the revision); (I) to denote a rate increase; (N) to denote a new rate or regulation; (R) to denote a rate reduction; and (T) to denote a change in text, but no change in rate or regulation. In addition to symbols for changes, each changed provision in the tariff shall contain a vertical line in the

right-hand margin of the page, which clearly shows the exact number of lines being changed.]

(4) Rate schedule. Each rate schedule must clearly state the public water system name(s) and the corresponding identification number(s) issued by the TCEQ or the sewer system name(s) and the corresponding identification number(s) issued by the TCEQ for each discharge permit, [territory] subdivision, city, and [ø] county in which the schedule is applicable.

(5) Tariff pages [sheets]. Tariff pages [sheets] must be numbered consecutively. Each page [sheet] must show [an effective date, a revision number,] section number, page [sheet] number, name of the utility, [the name of the tariff,] and title of the section in a consistent manner. [Sheets issued under new numbers must be designated as original sheets. Sheets being revised must show the number of the revision, and the sheet numbers must be the same.]

(c) Composition of tariffs. A utility's tariff, including those utilities operating within the corporate limits of a municipality, must contain sections setting forth:

(1) (No change.)

(2) a list of the cities, [and] counties, and subdivision(s) in which service is provided, along with the public water system name(s) and corresponding identification number(s) issued by the TCEQ and sewer system names and corresponding discharge permit number(s) issued by the TCEQ to which the tariff applies [subdivisions or systems, in which service is provided];

(3) the CCN number(s) [certificate of convenience and necessity number] under which service is provided;

(4) (No change.)

(5) the service rules and regulations, including forms of the service agreements, if any, and customer service inspection forms [required] to be completed as required by the TCEQ [under 30 TAC §290.46(j) (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems) if the form used deviates from that specified in 30 TAC §290.47(d) (relating to Appendices)];

(6) (No change.)

(7) an approved drought contingency plan as required by the TCEQ [30 TAC §288.20 (relating to Drought Contingency Plans for Municipal Uses by Public Water Suppliers)]; and

(8) the forms [form] of payment to be accepted for utility services.

(d) Tariff filings in response to commission orders. Tariff filings made in response to an order issued by the commission must include a transmittal letter stating that the tariff [tariffs] attached is [are] in compliance with the order, giving the docket number, date of the order, a list of tariff pages [sheets] filed, and any other necessary information. Any service rules proposed in addition to those listed on the commission's [model] tariff form or any modifications of a rule in the [model] tariff must be clearly noted. All tariff pages [sheets] must comply with all other sections in this chapter and must include only changes ordered. The effective date and/or wording of the tariff must comply with the provisions of the order.

(e) Availability of tariffs. Each utility shall make available to the public at each of its business offices and designated sales offices within Texas all of its tariffs currently on file with the commission or regulatory authority, and its employees shall lend assistance to persons requesting information and afford these persons an opportunity to examine any of such tariffs upon request. The utility also shall provide

copies of any portion of the tariffs at a reasonable cost to [reproduce such tariff for] a requesting party.

(f) Rejection. Any tariff filed with the commission and found not to be in compliance with this section shall be [must be so marked and] returned to the utility with a brief explanation of the reasons for rejection.

(g) Change by other regulatory authorities. [Tariffs must be filed to reflect changes in rates or regulations set by other regulatory authorities and must include a copy of the order or ordinance authorizing the change.] Each utility operating within the corporate limits of a municipality exercising original jurisdiction shall file with the commission [a copy of] its current tariff that has been authorized by the municipality. If changes are made to the utility's tariff for areas under the jurisdiction of the municipality, the utility shall file its tariff reflecting the changes along with the ordinance, resolution or order issued by the municipality to authorize the change.

~~[(h) Purchased water or sewage treatment provision.]~~

~~[(1) A utility that purchases water or sewage treatment may include a provision in its tariff to pass through to its customers changes in such costs. The provision must specify how it is calculated and affects customer billings.]~~

~~[(2) This provision must be approved by the commission in a rate proceeding. A proposed change in the method of calculation of the provision must be approved in a rate proceeding.]~~

~~[(3) Once the provision is approved, any revision of a utility's billings to its customers to allow for the recovery of additional costs under the provision may be made only upon issuing notice as required by paragraph (4) of this subsection. The review of a proposed revision is an informal proceeding. Only the commission staff, or the utility may request a hearing on the proposed revision. The recovery of additional costs is defined as an increase in water use fees or in costs of purchased water or sewage treatment.]~~

~~[(4) A utility that wishes to revise utility billings to its customers pursuant to an approved purchased water or sewer treatment or water use fee provision to allow for the recovery of additional costs shall take the following actions prior to the beginning of the billing period in which the revision takes effect:]~~

~~[(A) submit a written notice to the commission; and]~~

~~[(B) e-mail (if the customer has agreed to receive communications electronically) or mail notice to the utility's customers. Notice may be in the form of a billing insert and must contain the effective date of the change, the present calculation of customer billings, the new calculation of customer billings, and the change in charges to the utility for purchased water or sewage treatment or water use fees. The notice must include the following language: "This tariff change is being implemented in accordance with the utility's approved (purchased water) (purchased sewer) (water use fee) adjustment clause to recognize (increases) (decreases) in the (water use fee) (cost of purchased) (water) (sewage treatment). The cost of these charges to customers will not exceed the (increased) (decreased) cost of (the water use fee) (purchased) (water) (sewage treatment)."]~~

~~[(5) Notice to the commission must include a copy of the notice sent to the customers, proof that the cost of purchased water or sewage treatment has changed by the stated amount, and the calculations and assumptions used to determine the new rates.]~~

~~[(6) Purchased water or sewage treatment provisions may not apply to contracts or transactions between affiliated interests.]~~

(h) [(i)] Effective date. The effective date of a tariff change is the date of approval by the regulatory authority [commission], unless otherwise specified by the regulatory authority, in a commission order, or by rule. The effective date of a proposed rate increase under TWC §13.187 or §13.1871 is the proposed date on the notice to customers and the regulatory authority [commission], unless suspended by the regulatory authority [commission].

(i) [(j)] Tariffs filed by water supply or sewer service corporations. Every water supply or sewer service corporation shall file, for informational purposes only, [three] complete copies of its tariff showing all rates that are subject to the appellate jurisdiction of the commission and that are in force for any utility service, product, or commodity offered. The tariff must include all rates, rules, and regulations relating to [or affecting the rates,] utility service or extension of service, the CCN number(s), and all affected counties or cities. If changes are made to the water supply or sewer service corporation's tariff, the water supply or sewer service corporation shall file a copy of the tariff reflecting the changes, along with a cover letter with the effective date of the change. The copies of the tariff shall be filed in conformance with §22.71 of this title (relating to Filing of Pleadings, Documents, and Other Materials) and §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission). [or product, or commodity furnished and shall specify the certificate of convenience and necessity number and in which counties or cities it is effective.]

~~[(k) Surcharge.]~~

~~[(1) A surcharge is an authorized rate to collect revenues over and above the usual cost of service.]~~

~~[(2) If specifically authorized for the utility in writing by the commission or the municipality exercising original jurisdiction over the utility, a surcharge to recover the actual increase in costs to the utility may be collected over a specifically authorized time period without being listed on the approved tariff for:]~~

~~[(A) sampling fees not already included in rates;]~~

~~[(B) inspection fees not already included in rates;]~~

~~[(C) production fees or connection fees not already included in rates charged by a groundwater conservation district; or]~~

~~[(D) other governmental requirements beyond the control of the utility.]~~

~~[(3) A utility shall use the revenues collected pursuant to a surcharge only for the purposes noted and handle the funds in the manner specified according to the notice or application submitted by the utility to the commission. The utility may redirect or use the revenues for other purposes only after first obtaining the approval of commission.]~~

(j) [(h)] Temporary water rate provision for mandatory water use reduction.

(1) A utility's tariff may include a temporary water rate provision that will allow the utility to increase its retail customer rates during periods when a court, government agency, or other authority orders mandatory water use reduction measures that affect the utility customers' use of water service and the utility's water revenues. Implementation of the temporary water rate provision will allow the utility to recover [from customers'] revenues that the utility would otherwise have lost due to mandatory water use reductions [in accordance with the temporary water rate provision approved by the commission]. If a utility obtains an alternate water source to replace the required mandatory reduction [a portion of its water supply from another unrestricted water source or water supplier] during the time the temporary water rate provision is in effect, [the rate resulting from implementation of]

the temporary water rate provision must be adjusted to prevent over-recovery [~~account for the supplemental water supply and to limit over-recovery~~] of revenues from customers. A temporary water rate provision may not be implemented [~~by a utility~~] if an [~~there exists an available, unrestricted,~~] alternative water supply is [~~that the utility can use to~~] immediately available [~~replace,~~] without additional cost[~~; the water made unavailable because of the action requiring a mandatory reduction of use of the affected water supply.~~].

(2) The temporary water rate provision must be approved by the regulatory authority having original jurisdiction [~~commission~~] in a rate proceeding before it may be included in the utility's approved tariff or implemented as provided in this subsection. A proposed change in the temporary water rate provision must be approved in a rate proceeding. A utility that has filed a rate change within the last 12 months may file a request for the limited purpose of obtaining a temporary water rate provision.

(3) A utility may request a temporary water rate provision for mandatory water use reduction using the formula in this paragraph to recover 50% or less of the revenues that would otherwise have been lost due to mandatory water use reductions [~~through a limited rate proceeding~~]. The formula for a temporary water rate provision for mandatory water use reduction under this paragraph is:

Figure: 16 TAC §24.21(j)(3)
[Figure: 16 TAC §24.21(i)(3)]

(A) The utility shall file a temporary water rate provision for mandatory water use reduction request [~~application~~] and provide customer notice as required by the regulatory authority [~~commission~~], but is not required to provide complete financial data to support its existing rates. Notice must include a statement of when the temporary water rate provision would be implemented, the customer class(es) affected, the rates affected, information on how to protest and/or intervene in the rate change, the address of the regulatory authority [~~commission~~], the time frame for protests, and any other information that is required by the regulatory authority [~~commission~~ in the temporary water rate application]. The utility's existing rates are not subject to review in this [~~the~~] proceeding and the utility is only required to support the need for the temporary rate. A request for a temporary water rate provision for mandatory water use reduction under this paragraph is not considered a statement of intent to increase rates subject to the 12-month limitation in §24.23 of this title (relating to Time Between Filings).

(B) The utility shall establish that the projected revenues that will be generated by the temporary water rate provision are required by the utility to pay reasonable and necessary expenses that will be incurred by the utility during the time mandatory water use reductions are in effect.

(4) A utility may request a temporary water rate provision for mandatory water use reduction using the formula in paragraph (3) of this subsection or any other method acceptable to the regulatory authority [~~commission~~] to recover up to 100% of the revenues that would otherwise have been lost due to mandatory water use reductions.

(A) If the utility requests authorization to recover more than 50% of lost revenues, it shall submit financial data to support its existing rates as well as the temporary water rate provision for mandatory water use reduction even if no other rates are proposed to be changed. The utility's existing rates are subject to review in addition to the temporary water rate provision for mandatory water use reduction.

(B) The utility shall establish that the projected revenues that will be generated by the temporary water rate provision for mandatory water use reduction are required by the utility to pay

reasonable and necessary expenses that will be incurred by the utility during the time mandatory water use reductions are in effect; that the rate of return granted by the regulatory authority [~~commission~~] in the utility's last rate case does not adequately compensate the utility for the foreseeable risk that mandatory water use reductions will be ordered; and that revenues generated by existing rates do not exceed reasonable cost of service.

(5) The utility may place the temporary water rate provision into effect only after:

(A) it [~~the temporary water provision~~] has been approved by the regulatory authority [~~commission~~] and included in the utility's approved tariff in a prior rate proceeding;

(B) there is an action by a court, government agency, or other authority requiring mandatory water use reduction measures that affect the utility's customers' use of utility services; and

(C) issuing notice as required by paragraph (7) of this subsection.

(6) The utility may readjust its temporary water rate provision [~~rates using the temporary water rate provision for mandatory water use reduction as necessary~~] to respond to modifications or changes to the original required [~~order requiring mandatory~~] water use reductions by reissuing notice as required by paragraph (7) of this subsection. If the commission is the regulatory authority, only [~~Only~~] the commission or the utility may request a hearing on the proposed implementation.

(7) A utility implementing [~~that wishes to place~~] a temporary water rate for mandatory water use reduction [~~into effect~~] shall take the following actions prior to the beginning of the billing period in which the temporary water rate provision [~~for mandatory water use reduction~~] takes effect:

(A) submit a written notice, including a copy of the notice received from the court, government agency, or other authority requiring the reduction in water use, to the regulatory authority [~~commission~~]; and

(B) e-mail, if the customer has agreed to receive communications electronically, or mail notice to the utility's customers. Notice may be in the form of a billing insert and must contain the effective date of the implementation and the new rate the customers will pay after the temporary water rate provision is implemented. If the commission is the regulatory authority, the [~~The~~] notice must include the following language: "This rate change is being implemented in accordance with the temporary water rate provision approved by the Public Utility Commission of Texas to recognize the loss of revenues due to mandatory water use reduction ordered by (name of entity issuing order). The new rates will be effective on (date) and will remain in effect until the mandatory water use reductions are lifted or expired. The purpose of the rate is to ensure the financial integrity of the utility. The utility will recover through the rate (the percentage authorized by the temporary rate) % of the revenues the utility would otherwise have lost due to mandatory water use reduction by increasing the volume charge from (\$ per 1,000 gallons to \$ per 1,000 gallons)."

(8) A utility shall stop charging a temporary water rate provision as soon as is practical after the order that required mandatory water use reduction is ended, but in no case later than the end of the billing period that was in effect when the order was ended. The utility shall notify its customers of the date that the temporary water rate provision ends and that its rates will return to the level authorized before the temporary water rate provision was implemented. The notice provided to customers regarding the end of the temporary water rate provision shall be filed with the commission.

(9) If the regulatory authority [~~commission~~] initiates an inquiry into the appropriateness or the continuation of a temporary water rate provision, it may establish the effective date of its decision on or after the date the inquiry is filed.

(k) [~~m~~] Multiple system consolidation. Except as otherwise provided in subsection (m) [~~o~~] of this section, a utility may consolidate its tariff and rate design for more than one system if:

(1) the systems included in the tariff are substantially similar in terms of facilities, quality of service, and cost of service; and

(2) the tariff provides for rates that promote water conservation for single-family residences and landscape irrigation.

(l) [~~n~~] Regional rates. The regulatory authority [~~commission~~], where practicable, shall consolidate the rates by region for applications submitted under TWC §13.187 or §13.1871 with a consolidated tariff and rate design for more than one system.

(m) [~~o~~] Exemption. Subsection (k) [~~m~~] of this section does not apply to a utility that provided service in only 24 counties on January 1, 2003.

(n) [~~p~~] Energy cost adjustment clause.

(1) A utility that purchases energy (electricity or natural gas) that is necessary for the provision of retail water or sewer service may request the inclusion of an energy cost adjustment clause in its tariff to allow the utility to adjust its rates to reflect increases and decreases in documented energy costs.

(2) A utility that requests the inclusion of an energy cost adjustment clause in its tariff shall file a request [~~an application~~] with the commission. The utility shall also give notice of the proposed energy cost adjustment clause by mail, either separately or accompanying customer billings, e-mail or by hand delivery to all affected utility customers at least 60 days prior to the proposed effective date. Proof of notice in the form of an affidavit stating that proper notice was delivered to affected customers and stating the date(s) [~~dates~~] of such delivery shall be filed with the commission by the [~~applicant~~] utility as part of the request [~~application~~]. Notice must be provided on the form prescribed by the commission for a rate [~~included in the commission's~~] application package filed under TWC §13.187 or §13.1871 and must contain the following information:

(A) the utility name and address, a description of how the increase or decrease in energy costs will be calculated, the effective date of the proposed change, and the class(es) [~~classes~~] of utility customers affected. The effective date of the proposed energy cost adjustment clause must be the first day of a billing period, which should correspond to the day of the month when meters are typically read, and the clause may not apply to service received before the effective date of the clause;

(B) information on how to submit comments regarding the energy cost adjustment clause, the address of the commission, and the time frame for comments; and

(C) any other information that is required by the commission [~~application form~~].

(3) The commission's review of the utility's request [~~application~~] is an uncontested matter not subject to a contested case hearing. However, the commission shall hold an uncontested public meeting [~~on the application~~] if requested by a member of the legislature who represents the area served by the utility or if the commission determines that there is substantial public interest in the matter.

(4) Once an energy cost adjustment clause has been approved, documented changes in energy costs must be passed through

to the utility's customers within a reasonable time. The pass-through [~~pass through~~], whether an increase or decrease, shall be implemented on at least an annual basis, unless the commission determines a special circumstance applies. Anytime changes are being made using this provision, notice shall be provided as required by paragraph (5) of this subsection. Copies of notices to customers shall be filed with the commission.

(5) Before a utility implements a change in its energy cost adjustment clause as required by paragraph (4) of this subsection, the utility shall take the following actions prior to the beginning of the billing period in which the implementation takes effect:

(A) submit written notice to the commission, which must include a copy of the notice sent to the customers, proof that the documented energy costs have changed by the stated amount; and

(B) e-mail, if the customer has agreed to receive communications electronically, mail, either separately or accompanying customer billings, or hand deliver notice to the utility's affected customers. Notice must contain the effective date of change and the increase or decrease in charges to the utility for documented energy costs. The notice must include the following language: "This tariff change is being implemented in accordance with the utility's approved energy cost adjustment clause to recognize (increases) (decreases) in the documented energy costs. The cost of these charges to customers will not exceed the (increase) (decrease) in documented energy costs."

(6) The commission may suspend the adoption or implementation of an energy cost adjustment clause if the utility has failed to properly file the request [~~complete the application~~] or has failed to comply with the notice requirements or proof of notice requirements. If the utility cannot clearly demonstrate how the clause is calculated, the increase or decrease in documented energy costs or how the increase or decrease in documented energy costs will affect rates, the commission may suspend the adoption or implementation of the clause until the utility provides additional documentation requested by the commission. If the commission suspends the adoption or implementation of the clause, the adoption or implementation will be effective on the date specified by the commission.

(7) Energy cost adjustment clauses may not apply to contracts or transactions between affiliated interests.

(8) A proceeding under this subsection is not a rate case pursuant to TWC §13.187, §13.1871, or §13.1872.

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 June 9, 2016.

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Adriana Gonzales

Rues Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: July 24, 2016

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



CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER I. TRANSMISSION AND DISTRIBUTION
DIVISION 2. TRANSMISSION AND DISTRIBUTION APPLICABLE TO ALL ELECTRIC UTILITIES

16 TAC §25.211

The Public Utility Commission of Texas (commission) proposes amendments to §25.211, relating to Interconnection of On-site Distributed Generation. Amendments are made solely to the Agreement for Interconnection and Parallel Operation of Distributed Generation (Interconnection Agreement or IA). The amendments allow the end-use customer to be a party to the IA or otherwise elect to have an entity who owns the distributed generation (DG) facility but is not the end-use customer (DG owner), a person who by contract is assigned ownership rights to energy produced by the DG facility, or the owner of the premises at which the DG facility is located, to be a party to the IA rather than the end-use customer.

David Smithson, Engineering Specialist, has determined that for each year of the first five-year period the amendments will be in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering the amendments.

Mr. Smithson has determined that for each year of the first five years the amendments will be in effect, the anticipated public benefits as a result of the amendments will be improved clarity regarding which type of entity may enter into an IA with a utility. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the amendments. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Mr. Smithson has also determined that for each year of the first five years the amendments will be 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 at 9:00 a.m. on Tuesday, August 16, 2016. The request for a public hearing must be received by Friday, July 29, 2016.

Initial comments on the 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, not later than Friday, July 29, 2016. Reply comments may be submitted not later than Friday, August 12, 2016. Sixteen copies of initial comments and reply comments are required to be filed pursuant to 16 Tex. Admin. Code §22.71(c). Comments shall be organized in a manner consistent with the organization of the amended rule. All comments should refer to Project Number 45078.

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2014) (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, §14.001, which provides the commission with the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §31.002 (20), which defines transmission service to include transmission over distribution facilities; §32.101, which requires an electric utility to file its tariff with each regulatory authority; §35.004(b), which requires the commission to ensure that an electric utility or transmission and distribution utility provides nondiscriminatory access to wholesale transmission service for qualifying facilities, exempt wholesale generators, power marketers, power generation companies, retail electric providers, and other electric utilities and transmission and distribution utilities; §36.003, which requires that each rate be just and reasonable and not unreasonably preferential, prejudicial, or discriminatory; §38.001, which requires an electric utility to furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable; §39.101(b)(3), which requires the commission to ensure that customers have access to on-site distributed generation and to providers of energy generation by renewable energy resources; §39.554, which addresses the interconnection of distributed renewable generation with an electric utility subject to PURA Chapter 39, Subchapter L; and §39.916, which addresses the interconnection of distributed renewable generation.

Cross reference to statute: Public Utility Regulatory Act §§14.001, 14.002, 31.002, 32.101, 35.004, 36.003, 38.001, 39.101, 39.554, and 39.916.

§25.211. *Interconnection of On-Site Distributed Generation (DG).*

(a) - (o) (No change.)

(p) Agreement for Interconnection and Parallel Operation of Distributed Generation.

Figure: 16 TAC §25.211(p)

(q) (No change.)

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

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Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

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



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER AA. COMMISSIONER'S

RULES ON SCHOOL FINANCE

19 TAC §61.1020

The Texas Education Agency (TEA) proposes new §61.1020, concerning excess funds for video surveillance of special education settings. The proposed new section is necessary to implement the Texas Education Code (TEC), §42.2528, as added by Senate Bill (SB) 507, 84th Texas Legislature, 2015.

SB 507, 84th Texas Legislature, 2015, added the TEC, §29.022, to require school districts and charter schools to provide video surveillance in certain special education settings on request by a parent, trustee, or staff member. SB 507 also added the TEC, §42.2528, to provide for a grant program to assist in covering the cost of video surveillance equipment for use in implementing the TEC, §29.022, if surplus Foundation School Program (FSP) funds are available.

Proposed new 19 TAC §61.1020 would implement the TEC, §42.2528, by establishing provisions for a grant program that would be created should FSP funds become available. The new section would describe general provisions, eligibility requirements, the application process, the finality of the award based on information available to the TEA as of the deadline for receipt of applications, data sources to be used for tax information and the count of students in weighted average daily attendance, definitions, deadlines, assignment of priority statuses for applicants, and how funds would be distributed.

The proposed new section would require school districts and charter schools that wish to request additional funds to prepare and submit grant applications. Applicants for a reimbursement grant would also be required to submit an itemized account of equipment purchased for use in implementing the TEC, §29.022.

The proposed new section would have no locally maintained paperwork requirements.

FISCAL NOTE. Al McKenzie, director of state funding, has determined that for the first five-year period the new section is in effect, no fiscal impact to the state is anticipated beyond what the statute requires. School districts and charter schools that are awarded funds under this program would see an increase in FSP payments. There is no effect on local economy for the first five years that the proposed new rule is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. Mr. McKenzie has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section will be to allow the agency to provide school districts and charter schools with financial assistance in meeting the new requirements of the TEC, §29.022, as added by SB 507, 84th Texas Legislature, 2015, if surplus FSP funds are available. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES 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 June 24, 2016, and ends July 25, 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. Comments may also be submitted electronically to rules@tea.texas.gov. A

request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on June 24, 2016.

STATUTORY AUTHORITY. The new section is proposed under the Texas Education Code (TEC), §42.2528, which requires the commissioner by rule to establish a grant program through which excess Foundation School Program funds are awarded as grants for the purchase of video surveillance equipment for compliance with the TEC, §29.022.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §42.2528.

§61.1020. Excess Funds for Video Surveillance of Special Education Settings.

(a) General provisions. This section implements the Texas Education Code (TEC), §42.2528 (Excess Funds for Video Surveillance of Special Education Settings). If the commissioner of education determines that appropriated funds are highly likely to exceed expenditures under the Foundation School Program (FSP) for the biennium after accounting for all critical FSP data required to make accurate expenditure estimates and there is sufficient funding remaining to provide for a grant program under the TEC, §42.2528, the commissioner shall make a grant application available to apply for funds to cover the cost of purchasing video equipment for use in implementing the TEC, §29.022, and announce the amount of funds available.

(b) Eligibility. School districts and charter schools that have purchased or that intend to purchase video equipment for the purpose of implementing the TEC, §29.022, may apply for funds necessary to reimburse the cost of such equipment. Purchases made after September 1, 2015, that have not been previously reimbursed under this grant program or through gifts, grants, or donations under the TEC, §29.022(f), are eligible to apply.

(c) Application process. School districts and charter schools must submit a separate application request in each year that excess funds are made available. The application shall contain, at a minimum, the following:

(1) a description of the type of equipment to be purchased or that has been purchased using funds provided under this section;

(2) a description of the intended use of the equipment to be funded using funds provided under this section; and

(3) an itemized account of the cost of the equipment to be funded using funds provided under this section.

(d) Finality of award. Awards of assistance under this section will be made based on the information available to the Texas Education Agency as of the deadline for receipt of applications for that application cycle.

(e) Data sources. The maintenance and operations tax rate and the interest and sinking tax rate will be based on data from the controller of public accounts property tax assistance division for the current school year. Maintenance and operations tax collections and the count of students in weighted average daily attendance (WADA) will come from the most recently published summary of finance for the most recent school year that is in Final or Near Final status.

(f) Definitions. The following terms have the following meanings when used in this section.

(1) State maximum compressed tax rate--The state compression percentage multiplied by \$1.50.

(2) Maintenance and operations tax collections per WADA--The maintenance and operations tax collections net of payments into a tax increment fund and net of payments for an Instructional Facilities Allotment lease purchase arrangement as reported in the most recently available school year that is in Final or Near Final status divided by the count of students in weighted average daily attendance as reported in the same summary of finance.

(3) Video equipment--Video equipment as described in §103.1301(b)(8) of this title (relating to Video Surveillance of Certain Special Education Settings).

(4) Eligible requests--An eligible request for funds is a request for video equipment that is necessary to comply with the provisions of the TEC, §29.022, and that has not received funds under this section in a prior application cycle or through a gift, grant, or donation under the TEC, §29.022(f).

(g) Deadlines. The commissioner will announce a deadline in conjunction with making a determination that excess funds are available for the purpose of implementing the TEC, §42.2528. All applications received by the announced deadline will be reviewed. Successful applications will be ranked according to the criteria in subsection (h) of this section.

(h) Priority status. Upon close of the application cycle, all eligible applications will be awarded priority status in accordance with the criteria outlined in paragraphs (1)-(4) of this subsection. All applications within Priority 1 will be fully funded before funds are allocated to Priority 2 and Priority 3. Funds not used for Priority 1 will be allocated to Priority 2 and Priority 3 in proportion to the total funds requested by school districts in those categories. If Priority 2 and Priority 3 applications are fully funded, remaining funds will be allocated to Priority 4.

(1) Priority 1. Applications from school districts that have current-year adopted tax rates for maintenance and operations of at least \$1.17. If insufficient funds remain to fully fund all Priority 1 applications, funds will be awarded in proportion to the amount of eligible requests for each applicant compared to total available funds.

(2) Priority 2. Applications from school districts with maintenance and operations tax rates at least equal to the state maximum compressed tax rate. Priority 2 applications will be sorted by maintenance and operations tax collections per WADA and Priority 2 funds shall be awarded beginning with the school district with the lowest collections per WADA.

(3) Priority 3. Applications from school districts with interest and sinking fund tax rates of at least \$0.40 per \$100 of valuation. Priority 3 applications will be sorted by interest and sinking tax rates, and Priority 3 funds shall be awarded beginning with the school district with the highest interest and sinking tax rate. If insufficient funds remain to fully fund all Priority 3 school districts at a given interest and sinking tax rate, remaining funds will be awarded in proportion to the amount of eligible requests for each applicant compared to total available funds.

(4) Priority 4. All other applications. Remaining funds available for Priority 4 applications, including charter schools, shall be awarded in proportion to the amount of eligible requests compared to total available funds.

(i) Distribution of funds. Funds will be allocated through the FSP and will appear on the school district or charter school summary of finance and be delivered as soon as is practicable after awards have been made.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



CHAPTER 62. COMMISSIONER'S RULES CONCERNING THE EQUALIZED WEALTH LEVEL

19 TAC §62.1071

(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 19 TAC §62.1071(a) is not included in the print version of the Texas Register. The figure is available in the html version of the June 24, 2016, issue of the Texas Register on-line.)

The Texas Education Agency (TEA) proposes an amendment to §62.1071, concerning the equalized wealth level. The section establishes provisions relating to wealth equalization requirements. The proposed amendment would adopt as a part of the Texas Administrative Code (TAC) the *Manual for Districts Subject to Wealth Equalization 2016-2017 School Year*. The manual contains the processes and procedures that the TEA uses in the administration of the provisions of the Texas Education Code (TEC), Chapter 41, and the fiscal, procedural, and administrative requirements that school districts subject to the TEC, Chapter 41, must meet.

The TEA has adopted the procedures contained in each yearly manual for districts subject to wealth equalization as part of the TAC since 2011. The earlier version of 19 TAC §62.1071, Administration of Wealth Equalization, adopted effective June 11, 1998, and subsequently amended several times, was repealed effective May 9, 2011, and replaced with the wealth equalization manual to remove outdated and obsolete provisions from rule. The intent is to annually update 19 TAC §62.1071 to refer to the most recently published manual. Manuals adopted for previous school years will remain in effect with respect to those school years.

The proposed amendment to 19 TAC §62.1071, Manual for Districts Subject to Wealth Equalization, would adopt in rule the official TEA publication *Manual for Districts Subject to Wealth Equalization 2016-2017 School Year* as Figure: 19 TAC §62.1071(a).

Each school year's manual for districts subject to wealth equalization explains how districts subject to wealth equalization are identified; the fiscal, procedural, and administrative requirements those districts must meet; and the consequences for not meeting requirements. The manual also provides information on using the online Foundation School Program (FSP) System to fulfill certain requirements.

Three significant changes to the *Manual for Districts Subject to Wealth Equalization 2016-2017 School Year* from the *Manual for Districts Subject to Wealth Equalization 2015-2016 School Year* are as follows.

Election Dates

The Chapter 41 Option 3 and Option 4 election dates have been moved to the District Intent/Choice Selection form in the Chapter 41 subsystem of the online FSP System.

Chapter 41 Intent Letter

The Chapter 41 Intent Letter is no longer mailed to districts. The letter authorizing districts to proceed with adopting a tax rate is located in a link at the bottom of the District Intent/Choice Selection form in the Chapter 41 subsystem of the online FSP System.

Changes to deadlines noted throughout

The language corresponding to passage of Senate Bill (SB) 1, 84th Texas Legislature, 2015, has been removed because transitional provisions from SB 1 expire September 1, 2016, and will not apply to the 2016-2017 school year.

The proposed rule action would place the specific procedures contained in the *Manual for Districts Subject to Wealth Equalization 2016-2017 School Year* in the TAC. The TEA administers the wealth equalization provisions of the TEC, Chapter 41, according to the procedures specified in each yearly manual for districts subject to wealth equalization. Data reporting requirements are addressed primarily through the online FSP System.

The proposed rule action would have no locally maintained paperwork requirements.

FISCAL NOTE. Al McKenzie, director of state funding, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government, including local school districts and open-enrollment charter schools, as a result of enforcing or administering the amendment. There is no effect on local economy for the first five years that the proposed amendment is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. Mr. McKenzie has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be to continue to inform the public of the existence of an annual publication specifying requirements for school districts subject to wealth equalization. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

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 June 24, 2016, and ends July 25, 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. Comments may also be submitted electronically to rules@tea.texas.gov. A request for a public hearing on the proposal submitted under the

Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on June 24, 2016.

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §41.006, which authorizes the commissioner of education to adopt rules necessary for the implementation of the TEC, Chapter 41.

CROSS REFERENCE TO STATUTE. The amendment implements the TEC, §41.006.

§62.1071. *Manual for Districts Subject to Wealth Equalization.*

(a) The processes and procedures that the Texas Education Agency (TEA) uses in the administration of the provisions of the Texas Education Code (TEC), Chapter 41, and the fiscal, procedural, and administrative requirements that school districts subject to the TEC, Chapter 41, must meet are described in the official TEA publication *Manual for Districts Subject to Wealth Equalization 2016-2017 [2015-2016] School Year*, provided in this subsection.

Figure: 19 TAC §62.1071(a)
[Figure: 19 TAC §62.1071(a)]

(b) The specific processes, procedures, and requirements used in the manual for districts subject to wealth equalization are established annually by the commissioner of education and communicated to all school districts.

(c) School district actions and inactions in previous school years and data from those school years will continue to be subject to the annual manual for districts subject to wealth equalization with respect to those years.

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

Filed with the Office of the Secretary of State on June 10, 2016.

TRD-201602926

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: July 24, 2016

For further information, please call: (512) 475-1597



CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING FINANCIAL ACCOUNTABILITY

19 TAC §109.1001

The Texas Education Agency (TEA) proposes an amendment to §109.1001, concerning the financial accountability rating system. The section establishes provisions that detail the purpose, ratings, types of ratings, criteria, reporting, and sanctions for the financial accountability rating system. The proposed amendment would clarify the financial accountability rating indicators used to determine each school district's rating for the 2015-2016 rating year and subsequent years and describe a new "No Rating" category for certain school districts that receive territory from

an annexation order under the Texas Education Code (TEC), §13.054, or consolidation under the TEC, Chapter 41, Subchapter H.

Chapter 109, Budgeting, Accounting, and Auditing, Subchapter AA, Commissioner's Rules Concerning Financial Accountability, establishes provisions that detail the purpose, ratings, types of ratings, criteria, reporting, and sanctions for the financial accountability rating system, in accordance with Senate Bill 218, 77th Texas Legislature, 2001, and House Bill (HB) 3, 81st Texas Legislature, 2009. HB 5, Section 49, 83rd Texas Legislature, Regular Session, 2013, amended the TEC, §39.082, requiring that the commissioner of education include in the financial accountability rating system processes for anticipating the future financial solvency of each school district and open-enrollment charter school, including analysis of district and school revenues and expenditures for preceding school years. The TEC, §39.082, also requires the commissioner to adopt rules by which to measure the financial management performance and future financial solvency of a district or an open-enrollment charter school and sets forth specific requirements relating to indicators adopted by the commissioner and the assignment of ratings.

Section 109.1001 includes the financial accountability rating system and rating worksheets that explain the indicators that the TEA will analyze to assign financial accountability ratings for school districts and open-enrollment charter schools. The rule also specifies the minimum financial accountability rating information that a school district and an open-enrollment charter school is to report to parents and taxpayers in the district.

The proposed amendment would clarify the financial accountability rating indicators used to determine each school district's rating for the 2015-2016 rating year and subsequent years by revising the ratings worksheet calculations in Figure: 19 TAC §109.1001(e)(2) and Figure: 19 TAC §109.1001(e)(3). The proposed worksheets, dated August 2016, would differ from the current worksheets, dated August 2015, as follows.

Indicator 5 would be revised to show the operation of adding variable F for pension expense and net pension liability (NPL) instead of subtracting the variable from the calculation.

Indicators 6, 9, and 10 would be revised to remove the pension expense and NPL variables from the calculation since the amounts for pension expense and NPL are not applicable to the indicator calculations.

Indicator 10 would be revised to add variable E (function code 81 - capital outlay) in order to make the indicator more uniform for all districts.

Both figures, as well as subsection (h), would be modified to include a new category for "No Rating" for the 2016-2017 rating year and subsequent years. The rating would allow a school district that receives territory from an annexation or consolidation order by the commissioner due to closure or action under the TEC, Chapter 41, to not receive a financial accountability rating for two consecutive rating years after the annexation/consolidation with another school district.

The proposed amendment would have no new procedural and reporting implications. The proposed amendment would clarify the worksheet calculations that were implemented beginning with data from fiscal year 2015-2016 to report school district and open-enrollment charter school financial accountability information. TEA staff will continue to generate school district and open-enrollment charter school financial accountability ratings

based on data submitted by school districts and open-enrollment charter schools.

The proposed amendment would have no new locally maintained paperwork requirements.

FISCAL NOTE. Shirley Beaulieu, chief financial officer, has determined that for the first five-year period the amendment is in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendment. The proposed amendment would clarify and continue a financial accountability rating system that has been implemented under the requirements of statute since fiscal year 2014-2015 and that is required to continue. The proposed amendment would implement a financial accountability rating system as specified in the TEC, §39.082.

There is no effect on local economy for the first five years that the proposed amendment is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. Ms. Beaulieu has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be to ensure that the provisions of the financial accountability rating system align to make the indicators uniform for all school districts and charter schools and would provide a fair and equitable rating for all school districts and charter schools. In addition, the proposed amendment would adequately account for the incorporation of territory due to the actions on another district and not the receiving district. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

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 June 24, 2016, and ends July 25, 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. Comments may also be submitted electronically to rules@tea.texas.gov. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on June 24, 2016.

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §39.082, which requires the commissioner to develop and implement a financial accountability rating system for school districts and open-enrollment charter schools. The section establishes certain requirements, including procedures, to enable the commissioner and administrators to provide meaningful financial oversight and improvement along with transparency to the public. The section provides additional requirements and rulemaking authority for the commissioner. The amendment is also proposed under the TEC, §39.085, which provides the commissioner rulemaking authority for the implementation and administration of the financial accountability subchapter of the TEC, Chapter 39.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §39.082 and §39.085.

§109.1001. *Financial Accountability Ratings.*

(a) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(1) Annual Financial Report (AFR)--The audited annual report required by the Texas Education Code (TEC), §44.008, that is due to the Texas Education Agency (TEA) by no later than 150 days after the close of a school district's or an open-enrollment charter school's fiscal year.

(2) Debt--An amount of money owed to a person, bank, company, or other organization.

(3) Electronic submission--The TEA electronic data feed format required for use by school districts, open-enrollment charter schools, and regional education service centers (ESCs).

(4) Financial Integrity Rating System of Texas (FIRST)--The financial accountability rating system administered by the TEA in accordance with the TEC, §39.082 and §39.085. The system provides additional transparency to public education finance and meaningful financial oversight and improvement for school districts (School FIRST) and open-enrollment charter schools (Charter FIRST).

(5) Fiscal year--The fiscal year of a school district or an open-enrollment charter school, which begins on July 1 or September 1 of each year, as determined by the board of trustees of the district or the governing body of the charter holder in accordance with the TEC, §44.0011.

(6) Foundation School Program (FSP)--The program established under the TEC, Chapters 41, 42, and 46, or any successor program of state-appropriated funding for school districts in this state.

(7) Public Education Information Management System (PEIMS)--The system that school districts and open-enrollment charter schools use to load, validate, and submit their data to the TEA.

(8) Summary of Finances (SOF) report--The document of record for FSP allocations. An SOF report is produced for each school district and open-enrollment charter school by the TEA division responsible for state funding that describes the school district's or open-enrollment charter school's funding elements and FSP state aid.

(9) Warrant hold--The process by which state payments issued to payees indebted to the state, or payees with a tax delinquency, are held by the Texas Comptroller of Public Accounts until the debt is satisfied in accordance with the Texas Government Code, §403.055.

(b) The TEA will assign a financial accountability rating to each school district and open-enrollment charter school as required by the TEC, §39.082.

(c) The commissioner of education will evaluate the rating system every three years as required by the TEC, §39.082, and may modify the system in order to improve the effectiveness of the rating system. If the rating system has been modified, the TEA will communicate changes to ratings criteria and their effective dates to school districts and open-enrollment charter schools.

(d) The TEA will use the following sources of data in calculating the financial accountability indicators for school districts and open-enrollment charter schools:

(1) AFR. For each school district and open-enrollment charter school, the TEA will use audited financial data in the district's or charter's AFR. The AFR, submitted as an electronic submission

through the TEA website, must include data required in the Financial Accountability System Resource Guide (FASRG) adopted under §109.41 of this title (relating to Financial Accountability System Resource Guide);

(2) PEIMS. The TEA will use PEIMS data submitted by the school district or open-enrollment charter school in the calculation of the financial accountability indicators.

(3) Warrant holds. The TEA will use warrant holds as reported by the Texas Comptroller of Public Accounts in the calculation of the financial accountability indicators.

(4) FSP. The TEA will use the average daily attendance (ADA) information used for FSP funding purposes for the school district or open-enrollment charter school in the calculation of the financial accountability indicators.

(e) The TEA will base the financial accountability rating of a school district on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner, as shown in the figures provided in this subsection. Financial accountability ratings for a rating year are based on the data from the immediate prior fiscal year.

(1) The financial accountability rating indicators for rating year 2014-2015 are based on fiscal year 2014 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated August 2015 for rating year 2014-2015." Figure: 19 TAC §109.1001(e)(1) (No change.)

(2) The financial accountability rating indicators for rating year 2015-2016 are based on fiscal year 2015 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated August 2015 for rating year 2015-2016." Figure: 19 TAC §109.1001(e)(2) [Figure: 49 TAC §109.1001(e)(2)]

(3) The financial accountability rating indicators for rating year 2016-2017 are based on fiscal year 2016 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated August 2015 for rating year 2016-2017." The financial accountability rating indicators for rating years after 2016-2017 will use the same calculation and scoring method provided in the figure in this paragraph. Figure: 19 TAC §109.1001(e)(3) [Figure: 49 TAC §109.1001(e)(3)]

(4) The specific calculations and scoring methods used in the financial accountability rating worksheets for school districts for rating years prior to 2014-2015 remain in effect for all purposes with respect to those rating years.

(f) The TEA will base the financial accountability rating of an open-enrollment charter school on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner, as shown in the figures provided in this subsection. Financial accountability ratings for a rating year are based on the data from the immediate prior fiscal year.

(1) The financial accountability rating indicators for rating year 2014-2015 are based on fiscal year 2014 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated August 2015 for rating year 2014-2015." Figure: 19 TAC §109.1001(f)(1) (No change.)

(2) The financial accountability rating indicators for rating year 2015-2016 are based on fiscal year 2015 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated August 2015 for rating year 2015-2016."

Figure: 19 TAC §109.1001(f)(2) (No change.)

(3) The financial accountability rating indicators for rating year 2016-2017 are based on fiscal year 2016 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated August 2015 for rating year 2016-2017." The financial accountability rating indicators for rating years after 2016-2017 will use the same calculation and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(f)(3) (No change.)

(4) The specific calculations and scoring methods used in the financial accountability rating worksheets for open-enrollment charter schools for rating years prior to 2014-2015 remain in effect for all purposes with respect to those rating years.

(g) The types of financial accountability ratings that school districts or open-enrollment charter schools may receive for the rating year 2014-2015 are as follows.

(1) P for pass. This rating applies only to the financial accountability rating for rating year 2014-2015 based on fiscal year 2014 financial data. In accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive a P rating if it scores within the applicable range established by the commissioner for a P rating.

(2) F for substandard achievement. This rating applies to the financial accountability rating for rating year 2014-2015 based on fiscal year 2014 financial data. In accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive an F rating if it scores within the applicable range established by the commissioner for an F rating.

(h) The types of financial accountability ratings that school districts or open-enrollment charter schools may receive for the rating year 2015-2016 and all subsequent rating years are as follows.

(1) A for superior achievement. Beginning with the financial accountability rating for rating year 2015-2016 and all subsequent rating years, in accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive an A rating if it scores within the applicable range established by the commissioner for an A rating.

(2) B for above standard achievement. Beginning with the financial accountability rating for rating year 2015-2016 and all subsequent rating years, in accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive a B rating if it scores within the applicable range established by the commissioner for a B rating.

(3) C for standard achievement. Beginning with the financial accountability rating for rating year 2015-2016 and all subsequent rating years, in accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive a C rating if it scores within the applicable range established by the commissioner for a C rating.

(4) F for substandard achievement. Beginning with the financial accountability rating for rating year 2015-2016 and all subsequent rating years, in accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive an F rating if it scores within the applicable range established by the commissioner for an F rating.

(5) No Rating. Beginning with the financial accountability rating for rating year 2016-2017 and all subsequent rating years, in accordance with the procedures established in this section, a school district receiving territory due to an annexation order by the commissioner

under the TEC, §13.054, or consolidation under the TEC, Chapter 41, Subchapter H, will not receive a rating for two consecutive rating years beginning with the rating year that is based on financial data from the fiscal year in which the order of annexation becomes effective. After the second rating year, the receiving district will be subject to the financial accountability rating system established by the commissioner in this section.

(i) The commissioner may lower a financial accountability rating based on the findings of an action conducted under the TEC, Chapter 39.

(j) A financial accountability rating remains in effect until replaced by a subsequent financial accountability rating.

(k) The TEA will issue a preliminary financial accountability rating to a school district or an open-enrollment charter school on or before August 8 of each year. The TEA will base the financial accountability rating for a rating year on the data from the fiscal year preceding the rating year.

(1) The TEA will not delay the issuance of the preliminary or final rating if a school district or an open-enrollment charter school fails to meet the statutory deadline under the TEC, §44.008, for submitting the AFR. Instead, the school district or open-enrollment charter school will receive an F rating for substandard achievement.

(2) If the TEA receives an appeal of a preliminary rating, described by subsection (l) of this section, the TEA will issue a final rating to the school district or open-enrollment charter school no later than 60 days after receiving the appeal.

(3) If the TEA does not receive an appeal of a preliminary rating, described by subsection (l) of this section, the preliminary rating automatically becomes a final rating 31 days after issuance of the preliminary rating.

(l) A school district or an open-enrollment charter school may appeal its preliminary financial accountability rating through the following appeals process.

(1) The TEA division responsible for financial accountability must receive a written appeal no later than 30 days after the TEA's release of the preliminary rating. The appeal must include adequate evidence and additional information that supports the school district's or open-enrollment charter school's position. Appeals received 31 days or more after TEA issues a preliminary rating will not be considered.

(2) A data error attributable to the TEA is a basis for an appeal. If a preliminary rating contains a data error attributable to the TEA, a school district or an open-enrollment charter school may submit a written appeal requesting a review of the preliminary rating.

(3) A school district or an open-enrollment charter school may appeal any adverse issue it identifies in the preliminary rating. However, the financial accountability rating system is required to apply the rules uniformly. Therefore, an error by a school district or an open-enrollment charter school in recording data or submitting data through the TEA data collection and reporting system is not a valid basis for appealing a preliminary rating and unlikely to negate concerns raised by the indicator. The appeals process is not a permissible method to correct data that were inaccurately reported by the school district or open-enrollment charter school after those data were certified as accurate. A request for exception to the rules for a school district or an open-enrollment charter school is disfavored and likely to be denied.

(4) The TEA will only consider appeals that would result in a change of the preliminary rating.

(5) The TEA division responsible for financial accountability will select an external review panel to independently oversee the appeals process.

(6) The TEA division responsible for financial accountability will submit the information provided by the school district or open-enrollment charter school to the external review panel members for review.

(7) Each external review panel member will examine the appeal and supporting documentation and will submit his or her recommendation to the TEA division responsible for financial accountability.

(8) The TEA division responsible for financial accountability will compile the recommendations and forward them to the commissioner.

(9) The commissioner will make a final ratings decision.

(m) A final rating issued by the TEA under this section may not be appealed under the TEC, §7.057, or any other law or rule.

(n) A financial accountability rating by a voluntary association is a local option of the school district or open-enrollment charter school, but it does not substitute for a financial accountability rating by the TEA.

(o) Each school district and open-enrollment charter school is required to report information and financial accountability ratings to parents, taxpayers, and other stakeholders by implementing the following reporting procedures.

(1) Each school district and open-enrollment charter school must prepare and distribute an annual financial management report in accordance with this subsection.

(2) Each school district and open-enrollment charter school must provide the public with an opportunity to comment on the report at a public hearing.

(3) The school district's or open-enrollment charter school's annual financial management report must include:

(A) a description of its financial management performance based on a comparison, provided by the TEA, of its performance on the indicators established by the commissioner and reflected in this section. The report will contain information that discloses:

(i) state-established standards; and

(ii) the school district's or open-enrollment charter school's financial management performance under each indicator for the current and previous year's financial accountability ratings;

(B) any descriptive information required by the commissioner, including:

(i) a copy of the superintendent's current employment contract or other written documentation of employment if no contract exists. This must disclose all compensation and benefits paid to the superintendent. The school district or open-enrollment charter school may publish the superintendent's employment contract on its website instead of publishing it in the annual financial management report;

(ii) a summary schedule for the fiscal year (12-month period) of expenditures paid on behalf of the superintendent and each board member and total reimbursements received by the superintendent and each board member. This includes transactions on the school district's or open-enrollment charter school's credit card(s), debit card(s), stored-value card(s), and any other similar instrument(s) to cover expenses incurred by the superintendent and each board

member. The summary schedule must separately report reimbursements for meals, lodging, transportation, motor fuel, and other items. The summary schedule of total reimbursements should not include reimbursements for supplies and materials that were purchased for the operation of the school district or open-enrollment charter school;

(iii) a summary schedule for the fiscal year of the dollar amount of compensation and fees received by the superintendent from an outside school district or open-enrollment charter school or any other outside entity in exchange for professional consulting or other personal services. The schedule must separately report the amount received from each entity;

(iv) a summary schedule for the fiscal year of the total dollar amount of gifts that had a total economic value of \$250 or more received by the executive officers and board members. This reporting requirement applies only to gifts received by the school district's or open-enrollment charter school's (or charter holder's) executive officers and board members (and their immediate family as described by Government Code, Chapter 573, Subchapter B, Relationships by Consanguinity or by Affinity) from an outside entity that received payments from the school district or open-enrollment charter school (or charter holder) in the prior fiscal year and to gifts from competing vendors that were not awarded contracts in the prior fiscal year. This reporting requirement does not apply to reimbursement by an outside entity for travel-related expenses when the purpose of the travel was to investigate matters directly related to an executive officer's or board member's duties or to investigate matters related to attendance at education-related conferences and seminars with the primary purpose of providing continuing education (this exclusion does not apply to trips for entertainment purposes or pleasure trips). This reporting requirement excludes an individual gift or a series of gifts from a single outside entity that had a total economic value of less than \$250 per executive officer or board member; and

(v) a summary schedule for the fiscal year of the dollar amount received by board members for the total amount of business transactions with the school district or open-enrollment charter school (or charter holder). This reporting requirement is not to duplicate the items disclosed in the summary schedule of reimbursements received by board members; and

(C) any other information the board of trustees of the school district or open-enrollment charter school determines to be useful.

(4) The board of trustees of each school district or open-enrollment charter school must hold a public hearing on the annual financial management report within two months after receiving a final financial accountability rating. The public hearing must be held at a location in the district's or open-enrollment charter school's facilities. The board must give notice of the hearing to owners of real estate property in the geographic boundaries of the school district or open-enrollment charter school and to parents of school district or open-enrollment charter school students. In addition to other notice required by law, the board must provide notice of the hearing:

(A) to a newspaper of general circulation in the geographic boundaries of the school district or each campus of an open-enrollment charter school once a week for two weeks prior to holding the public meeting, providing the time and place of the hearing. The first notice in the newspaper may not be more than 30 days prior to the public meeting or less than 14 days prior to the public meeting. If no newspaper is published in the county in which the district's central administration office is located or within the geographic boundaries of an open-enrollment charter school's campus, then the board must publish the notice in the county nearest to the county seat of the county in

which the district's central administration office is located or in which the campus of the open-enrollment charter school is located; and

(B) through electronic mail to the mass communication media serving the school district or open-enrollment charter school, including, but not limited to, radio and television.

(5) At the hearing, the school district or open-enrollment charter school must provide the annual financial management report to the attending parents and taxpayers.

(6) The school district or open-enrollment charter school must retain the annual financial management report for at least three years after the public hearing and make it available to parents and taxpayers upon request.

(7) Each school district or open-enrollment charter school that received an F rating must file a corrective action plan with the TEA, prepared in accordance with instructions from the commissioner, within one month after the school district's or open-enrollment charter school's public hearing. The commissioner may require certain information in the corrective action plan to address the factor(s) that may have contributed to a school district's or an open-enrollment charter school's F rating.

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 June 13, 2016.

TRD-201602958

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: July 24, 2016

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



TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 72. APPLICATIONS AND APPLICANTS

22 TAC §72.6

The Texas Board of Chiropractic Examiners (Board) proposes amending Chapter 72, §72.6, concerning Time, Place and Scope of Examination. The proposed amended rule will assist the Board in serving the public, stakeholders and licensees. The amendment will update the rule to reflect present process and procedure concerning examinations.

Patricia Gilbert, Executive Director, has determined that for the first five-year period the proposed amended rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the amendment of the rule.

Ms. Gilbert has determined that for the first five-year period the proposed amended rule is in effect, the public benefit expected as a result of the proposed amended rule will be clarifying the present rule resulting in clearer guidance for the public and stakeholders.

Ms. Gilbert has also determined that the proposed amended rule will not have an adverse economic effect on small businesses or individuals because the proposed amended rule does not impose any duties or obligations upon small businesses or individuals.

This rule was proposed for publication at the Board's meeting on May 17, 2016. The proposed language was published on the Rules Committee and the Board agenda. Comment on the proposal was sought during the Rules Committee and the Board meetings prior to this publication in the *Texas Register*. No comments were received regarding this amendment.

Additional comments on the proposed amended rule and/or a request for a public hearing on the proposed amended rule may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St., Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705; or rules@tbce.state.tx.us, no later than 30 days from the date that this proposed amendment is published in the *Texas Register*.

This amended rule is proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. The Board is also authorized to promulgate this rule in carrying out the effect of Texas House Bill 7 enacted by the 84th Legislature.

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

§72.6. Time, Place and Scope of Examination.

(a) All applicants shall take and pass Parts I, II, III, IV and Physiotherapy of the National Board Examination and the board's Jurisprudence Examination.

(b) The passing score on each part of the National Board Examination is 375. The passing score for the Jurisprudence Examination is 75%.

(c) Regular jurisprudence examinations for licensure shall be given during the calendar year at the discretion of the board. All examinations shall be conducted in the English language. [The board shall set the date, time, and place of each examination]

(d) An applicant may not take the Jurisprudence Examination unless the applicant has successfully completed all parts of the National Board Examination which are required by the board and requirements set forth in 22 TAC §73.2(c)(1), (2).

~~[(e) Examinees shall not be permitted to bring any books, notes, journals, or other help into the examination room; nor to communicate by word or sign with another examinee while an examination is in progress without permission of the presiding examiner and within hearing of a designated representative of the board; nor shall an examinee leave the examination room except when so permitted by the presiding examiner. Violations of this rule shall subject the offender to expulsion.]~~

(e) ~~[(f)]~~ A license shall not be issued by the board to any examinee who has been detected in a deceptive or fraudulent act while an examination is in progress.

~~[(g) One member of the board or a designee of the board shall at all time be in the examination room while the examination is in progress and no persons except examinees, board members, employees of the board or persons having the express permission of the board shall be permitted in the examination rooms.]~~

(f) [(h)] When examination results [papers] are delivered to the Board [presiding examiner] they become the property of the board [or an agency designated by the board] and shall not be returned to the examinee. All test results [papers] must be retained by the board or an agency designated by the board to be preserved for a period of one year after final grading in order to allow an examinee the opportunity to request an analysis of such person's performance, which request must be made in writing.

(g) [(i)] Each applicant having a passing score must request from the National Board that a true and correct copy of the score report showing the results of each part of the National Board Examination be sent to 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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Bryan Snoddy

General Counsel

Texas Board of Chiropractic Examiners

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For further information, please call: (512) 305-6715



CHAPTER 74. CHIROPRACTIC RADIOLOGIC TECHNOLOGISTS

22 TAC §74.1

The Texas Board of Chiropractic Examiners (Board) proposes amending Chapter 74, §74.1, concerning Chiropractic Radiologic Technologists. The proposed amended rule will assist the Board in serving the public, stakeholders and licensees. The amendment will clarify definitions used in this chapter.

Patricia Gilbert, Executive Director, has determined that for the first five-year period the proposed amended rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the amendment of the rule.

Ms. Gilbert has determined that for the first five-year period the proposed amended rule is in effect, the public benefit expected as a result of the proposed amended rule will be clarifying the present rule resulting in clearer guidance for the public and stakeholders.

Ms. Gilbert has also determined that the proposed amended rule will not have an adverse economic effect on small businesses or individuals because the proposed amended rule does not impose any duties or obligations upon small businesses or individuals.

This rule was proposed for publication at the Board's meeting on May 17, 2016. The proposed language was published on the Rules Committee and the Board agenda. Comment on the proposal was sought during the Rules Committee and the Board meetings prior to this publication in the *Texas Register*. No comments were received regarding this amendment.

Additional comments on the proposed amended rule and/or a request for a public hearing on the proposed amended rule may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St., Tower

III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705; or rules@tbce.state.tx.us, no later than 30 days from the date that this proposed amendment is published in the *Texas Register*.

This amended rule is proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. The Board is also authorized to promulgate this rule in carrying out the effect of Texas House Bill 7 enacted by the 84th Legislature.

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

§74.1. Definitions.

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

(1) Board--The Texas Board of Chiropractic Examiners.

(2) Chiropractic Radiologic Technologist (CRT) or Registrant--A person who is registered with the board under this chapter.

(3) Licensee or Chiropractor--A person who is licensed by the board to practice chiropractic in the State of Texas.

(4) Medical Radiologic Technologist Certification Act--Occupations Code, Chapter 601.

(5) Supervision--Responsibility for and control of quality, radiation safety and protection, and technical aspects of the application of ionizing radiation to human beings for diagnostic [and/or therapeutic] purposes.

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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Bryan Snoddy

General Counsel

Texas Board of Chiropractic Examiners

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For further information, please call: (512) 305-6715



22 TAC §74.2

The Texas Board of Chiropractic Examiners (Board) proposes amending Chapter 74, §74.2, concerning Chiropractic Radiologic Technologists. The proposed amended rule will assist the Board in serving the public, stakeholders and licensees. The amendment is proposed as part of the Board's review of Chapter 74 to fulfill its ongoing duty to conduct agenda rule review and will reflect the transfer of administration duties from the Department of State Health Services (DSHS) to the Texas Medical Board (TMB) as required by Senate Bill 202.

Patricia Gilbert, Executive Director, has determined that for the first five-year period the proposed amended rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the amendment of the rule.

Ms. Gilbert has determined that for the first five-year period the proposed amended rule is in effect, the public benefit expected as a result of the proposed amended rule will be clarifying

ing the present rule resulting in clearer guidance for the public and stakeholders.

Ms. Gilbert has also determined that the proposed amended rule will not have an adverse economic effect on small businesses or individuals because the proposed amended rule does not impose any duties or obligations upon small businesses or individuals.

This rule was proposed for publication at the Board's meeting on May 17, 2016. The proposed language was published on the Rules Committee the Board agenda. Comment on the proposal was sought during the Rules Committee and the Board meetings prior to this publication in the *Texas Register*. No comments were received regarding this amendment.

Additional comments on the proposed amended rule and/or a request for a public hearing on the proposed amended rule may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St., Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705; or rules@tbce.state.tx.us, no later than 30 days from the date that this proposed amendment is published in the *Texas Register*.

This amended rule is proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. The Board is also authorized to promulgate this rule in carrying out the effect of Texas House Bill 7 enacted by the 84th Legislature.

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

§74.2. Registration of Chiropractic Radiologic Technologists.

(a) Registration required. Any person performing radiologic procedures in a chiropractic facility must register with the board, on a form prescribed by the board. This section does not apply to registered nurses or to persons certified under the Medical Radiologic Technologist Certification Act.

(b) Eligibility. An applicant for registration must either:

(1) submit proof of the applicant's registry with the Texas Medical Board (TMB) [Department of State Health Services (DSHS)] and completion of training and instruction as required by 25 TAC §140.518 (relating to Mandatory Training Programs for Non-Certified Technicians); or

(2) perform radiologic procedures for a licensee to whom a hardship exemption was granted by TMB [DSHS] within the previous 12 months under 25 TAC §140.520 (relating to Hardship Exemptions).

(c) Application submission. An applicant shall submit an application for registration, proof of status as provided in subsection (b) of this section, along with the radiologic technologist application fee as provided in §78.6 of this title (relating to Required Fees and Charges).

(d) Renewal. On or before January 1 of each year, a CRT shall renew his or her registration, by submitting:

(1) a registration application;

(2) the radiologic technologist application fee as provided in §78.6 of this title (relating to Required Fees and Charges); and

(3) proof of renewal status as provided in subsection (b) of this section.

(e) Expired registration.

(1) A CRT registration expires on January 1 of each year if it is not timely renewed.

(2) If a CRT's registration has expired, a person may renew his or her registration by submitting to the board all of the items required by subsection (d) of this section and a fee as provided in §78.6 of this title (relating to Required Fees and Charges).

(3) A person who fails to renew his or her registration on or before the expiration date may also be subject to an administrative penalty and other disciplinary sanctions as provided in subsection (h) of this section.

(f) Incomplete applications. No registration will be issued on an incomplete submission. Application or renewal packages that are submitted without all of the required documents or fees will be deemed incomplete and returned to the applicant.

(g) TMB [DSHS] authorization. A person may not perform radiologic procedures if that person is removed from the TMB [DSHS] registry or the hardship exemption under which the person is working is expired or revoked even if the person holds a valid CRT registration with the board. A CRT must provide to the board a copy of a hardship exemption granted by TMB [DSHS] within five days of its issuance if the exemption is granted prior to the registration renewal deadline.

(h) Disciplinary sanctions. The board may refuse to issue or renew, suspend, or revoke a CRT registration and/or impose an administrative penalty for the following:

(1) violation of the rules or an order of the board;

(2) violation of the Medical Radiologic Technologist Certification Act;

(3) violation of the rules or an order of TMB [DSHS];

(4) violation of the Texas Chiropractic Act; or

(5) nonpayment of registration fees.

(i) TMB [DSHS] compliance. All registrants shall comply with the rules of TMB [DSHS] for the control of radiation.

(j) Supervision required. A CRT shall perform radiological procedures only under the supervision of a licensee physically present on the premises.

(k) Cineradiography. Procedures that include cineradiography are limited to use by a licensee who has passed a course in its use, approved by the board.

(l) Non-static procedures. Any non-static procedure has the potential to be more dangerous and hazardous and by definition may only be performed by a licensee or a certified medical radiologic technologist.

(m) Licensee responsibility. A licensee shall not authorize or permit a person:

(1) who is not registered under this section to perform radiologic procedures on a patient unless otherwise authorized under the Medical Radiologic Technologist Act or 25 TAC Chapter 140, Subchapter J (relating to Medical Radiologic Technologists); or

(2) to perform radiologic procedures on a patient if that person has been removed from the registry of TMB [DSHS] or the licensee's hardship exemption has been revoked or has expired.

(n) Licensee compliance. A licensee shall comply with the Medical Radiological Technologist Certification Act and all applicable rules of TMB [DSHS].

(o) Laws governing disciplinary action. Disciplinary action against a CRT, including the imposition of administrative penalties, is governed by the Administrative Procedure Act, Government Code, Chapter 2001, and applicable enforcement provisions of the Texas Chiropractic Act, Occupations Code, Chapter 201, including Subchapters K through M.

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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Bryan Snoddy

General Counsel

Texas Board of Chiropractic Examiners

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For further information, please call: (512) 305-6715



CHAPTER 78. RULES OF PRACTICE

22 TAC §78.6

The Texas Board of Chiropractic Examiners (Board) proposes amending Chapter 78, §78.6, concerning required Chiropractic fees and charges. The amendment affects fees outlined in subsection (a). The proposed amended rule will assist the Board in serving the public, stakeholders and licensees. The proposed amendment updates the rule to reflect and ratify the present fee for the TBCE's jurisprudence examination.

Patricia Gilbert, Executive Director, has determined that for the first five-year period the proposed amended rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the amendment of the rule.

Ms. Gilbert has determined that for the first five-year period the proposed amended rule is in effect, the public benefit expected as a result of the proposed amended rule will be clarifying the present rule resulting in clearer guidance for the public and stakeholders.

Ms. Gilbert has also determined that the proposed amended rule will not have an adverse economic effect on small businesses or individuals because the proposed amended rule does not impose any duties or obligations upon small businesses or individuals.

This rule was proposed for publication at the Board's meeting on May 17, 2016. The proposed language was published on the Rules Committee and the Board agenda. Comment on the proposal was sought during the Rules Committee and the Board meetings prior to this publication in the *Texas Register*. No comments were received regarding this amendment.

Additional comments on the proposed amended rule and/or a request for a public hearing on the proposed amended rule may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St., Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705; or rules@tbce.state.tx.us, no later than 30 days from the date that this proposed amendment is published in the *Texas Register*.

This amended rule is proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the

Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. The Board is also authorized to promulgate this rule in carrying out the effect of Texas House Bill 7 enacted by the 84th Legislature.

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

§78.6. *Required Fees and Charges.*

(a) Current fees required by the board are as follows:

Figure: 22 TAC §78.6(a)

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

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

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Bryan Snoddy

General Counsel

Texas Board of Chiropractic Examiners

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For further information, please call: (512) 305-6715



PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §281.8

The Texas State Board of Pharmacy proposes amendments to §281.8, concerning Grounds for Discipline for a Pharmacy License. The amendments to §281.8, if adopted, implement provisions of SB 460 which amends the Texas Pharmacy Act to include waiving, discounting, reducing, or offering to waive, discount, or reduce a patient copayment or deductible for a compounded drug.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will ensure patients receive appropriate compounded prescriptions. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Written comments on the amendments may be submitted to Allison Vordenbaumen Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-6778. Comments must be received by 5:00 p.m., August 1, 2016.

The amendments are proposed under §§551.002, 554.051, and 565.002 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective con-

trol and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §565.002 as authorizing the agency to discipline the holder of a pharmacy license.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§281.8. *Grounds for Discipline for a Pharmacy License.*

(a) For the purposes of §565.002(a)(9) of the Act, a pharmacy fails to establish and maintain effective controls against diversion of prescription drugs when:

(1) there is inadequate security or procedures to prevent unauthorized access to prescription drugs; or

(2) there is inadequate security or procedures to prevent the diversion of prescription drugs.

(b) For the purposes of §565.002(a)(3) of the Act, it is grounds for discipline for a pharmacy license when:

(1) during the time an individual's license to practice pharmacy, either as a pharmacist or a pharmacist-intern, or a pharmacy technician's registration has been disciplined by the Board, resulting in the license or registration being revoked, canceled, retired, surrendered, denied or suspended, the pharmacy employs or allows such individual access to prescription drugs;

(2) the pharmacy possesses or engages in the sale, purchase, or trade or the offer to sell, purchase, or trade prescription drug samples; provided however, this paragraph does not apply to:

(A) prescription drugs provided by a manufacturer as starter prescriptions or as replacement for such manufacturer's outdated drugs;

(B) prescription drugs provided by a manufacturer in replacement for such manufacturer's drugs that were dispensed pursuant to written starter prescriptions; or

(C) prescription drug samples possessed by a pharmacy of a health care entity which provides health care primarily to indigent or low income patients at no or reduced cost and if:

(i) the samples are possessed in compliance with the Prescription Drug Marketing Act of 1987;

(ii) the pharmacy is owned by a charitable organization described in the Internal Revenue Code of 1986, §501(c)(3), or by a city, state or county government; and

(iii) the samples are for dispensing or provision at no charge to patients of such health care entity;

(3) the pharmacy possesses or engages in the sale, purchase, or trade or the offer to sell, purchase, or trade of prescription drugs:

(A) sold for export use only;

(B) purchased by a public or private hospital or other health care entity; or

(C) donated or supplied at a reduced price to a charitable organization described in the Internal Revenue Code of 1986, §501(c)(3), and possessed by a pharmacy other than one owned by the charitable organization;

(D) provided that subparagraphs (A) - (C) of this paragraph do not apply to:

(i) the purchase or other acquisition by a hospital or other health care entity which is a member of a group purchasing organization or from other hospitals or health care entities which are members of such organization;

(ii) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by an organization described in paragraph (2)(C)(ii) of this subsection to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(iii) the sale, purchase or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities which are under common control;

(iv) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons including the transfer of a drug between pharmacies to alleviate temporary shortages of the drug arising from delays in or interruptions of regular distribution schedules;

(v) the dispensing of a prescription drug pursuant to a valid prescription drug order to the extent otherwise permitted by law;

(4) the pharmacy engages in the sale, purchase, or trade or the offer to sell, purchase, or trade of:

(A) misbranded prescription drugs; or

(B) prescription drugs beyond the manufacturer's expiration date.

(5) the owner or managing officer has previously been disciplined by the board; or

(6) a non-resident pharmacy fails to reimburse the board or its designee for all expenses, including travel, incurred by the board in inspecting the non-resident pharmacy as specified in §556.0551 of the Act; [or]

(7) the owner, managing officer(s), or other pharmacy employee(s) displays abusive, intimidating, or threatening behavior toward a board member or employee during the performance of such member's or employee's lawful duties; or[-]

(8) the pharmacy waived, discounted, or reduced, or offered to waive, discount, or reduce, a patient copayment or deductible for a compounded drug in the absence of:

(A) a legitimate, documented financial hardship of the patient; or

(B) evidence of a good faith effort to collect the copayment or deductible from the patient.

(c) For the purposes of §565.002(a)(10) of the Act, the terms "fraud," "deceit," or "misrepresentation" in operating a pharmacy or in seeking a license to operate shall be defined as follows:

(1) "Fraud" means an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him, or to surrender a legal right, or to issue a license; a false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives or is intended to deceive another;

(2) "Deceit" means the assertion, as a fact, of that which is not true by any means whatsoever to deceive or defraud another; and

(3) "Misrepresentation" means a manifestation by words or other conduct which is a false representation of a matter of fact.

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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Gay Dodson, R.Ph.

Executive Director

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8037



SUBCHAPTER B. GENERAL PROCEDURES IN A CONTESTED CASE

22 TAC §281.31

The Texas State Board of Pharmacy proposes amendments to §281.31, concerning Burden of Proof. The amendments to §281.31, if adopted, clarify the rules for show cause order hearings.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will ensure hearings comply with state laws. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Written comments on the amendments may be submitted to Allison Vordenbaumen Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-6778. Comments must be received by 5:00 p.m., August 1, 2016.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§281.31. *Burden of Proof.*

(a) In a contested case hearing at the State Office of Administrative Hearings involving grounds for disciplinary action, the board has the burden to prove that grounds to discipline respondent exist. However, the party that claims any exemption or exception, including mitigating factors as specified in §281.62 of this chapter, has the burden to prove that the exemption or exception should be applied.

(b) In a contested case hearing at the State Office of Administrative Hearings involving a petition for reinstatement or removal of restriction, the petitioner has the burden to prove that the license should be reinstated or that a restriction on the license should be removed in accordance with §281.66 of the chapter.

(c) In a show cause order hearing before a panel of the board [at the State Office of Administrative Hearings] involving an applicant, licensee, or registrant who has been previously ordered by the board to submit to a mental or physical examination under §565.052 or §568.0036 of the Act, the applicant, licensee, or registrant has the burden to prove that the applicant, licensee, or registrant should not be required to submit to the examination.

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

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Gay Dodson, R.Ph.

Executive Director

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8037



SUBCHAPTER C. DISCIPLINARY GUIDELINES

22 TAC §281.66

The Texas State Board of Pharmacy proposes amendments to §281.66, concerning Application for Reissuance or Removal of Restrictions of a License or Registration. The amendments to §281.66, if adopted, correct grammar.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will ensure appropriate sanctions for individuals applying for reinstatement or removal of restrictions of a license. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Written comments on the amendments may be submitted to Allison Vordenbaumen Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-6778. Comments must be received by 5:00 p.m., August 1, 2016.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§281.66. *Application for Reissuance or Removal of Restrictions of a License or Registration.*

(a) A person whose pharmacy license, pharmacy technician registration, or license or registration to practice pharmacy has been canceled, revoked, or restricted, whether voluntary or by action of the board, may, after 12 months from the effective date of such cancella-

tion, revocation, or restriction, apply to the board for reinstatement or removal of the restriction of the license or registration.

(1) The application shall be given under oath and on the form prescribed by the board.

(2) A person applying for reinstatement or removal of restrictions may be required to meet all requirements necessary in order for the board to access the criminal history record information, including submitting fingerprint information and being responsible for all associated costs.

(3) A person applying for reinstatement or removal of restrictions has the burden of proof.

(4) On investigation and hearing, the board may in its discretion grant or deny the application or it may modify its original finding to reflect any circumstances that have changed sufficiently to warrant the modification.

(5) If such application is denied by the board, a subsequent application may not be considered by the board until 12 months from the date of denial of the previous application.

(6) The board in its discretion may require a person to pass an examination or examinations to reenter the practice of pharmacy.

(7) The fee for reinstatement of a license or registration shall be \$100 which is to be paid to the Texas State Board of Pharmacy and includes the processing of the reinstatement application.

(b) In reinstatement cases not involving criminal offenses, the board may consider the following items in determining the reinstatement of an applicant's previously revoked or canceled license or registration:

- (1) moral character in the community;
- (2) employment history;
- (3) financial support to his/her family;
- (4) participation in continuing education programs or other methods of maintaining currency with the practice of pharmacy;
- (5) criminal history record, including arrests, indictments, and convictions relating to felonies or misdemeanors involving moral turpitude;
- (6) offers of employment in pharmacy;
- (7) involvement in public service activities in the community;
- (8) failure to comply with the provisions of the board order revoking or canceling the applicant's license or registration;
- (9) action by other state or federal regulatory agencies;
- (10) any physical, chemical, emotional, or mental impairment;
- (11) the gravity of the offense for which the applicant's license or registration was canceled, revoked, or restricted and the impact the offense had upon the public health, safety and welfare;
- (12) the length of time since the applicant's license or registration was canceled, revoked or restricted, as a factor in determining whether the time period has been sufficient for the applicant to have rehabilitated himself/herself to be able to practice pharmacy in a manner consistent with the public health, safety and welfare;
- (13) competency to engage in the practice of pharmacy; or
- (14) other rehabilitation actions taken by the applicant.

(c) If a reinstatement case [eases] involves criminal offenses, the sanctions specified in §281.64 of this chapter (relating to Sanctions for Criminal Offenses) apply.

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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Gay Dodson, R.Ph.

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Texas State Board of Pharmacy

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CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.12

The Texas State Board of Pharmacy proposes amendments to §283.12 concerning Licenses for Military Service Members, Military Veterans, and Military Spouses. The amendments to §283.12, if adopted, eliminate the provisions allowing individuals who are unable to obtain a social security number to provide an individual taxpayer identification number in lieu of a social security number because a social security number is required in order to process criminal background checks.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will ensure individuals applying for a pharmacist license meet the requirements in order to conduct criminal background checks. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Written comments on the amendments may be submitted to Allison Vordenbaumen Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-6778. Comments must be received by 5:00 p.m., August 1, 2016.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§283.12. *Licenses for Military Service Members, Military Veterans, and Military Spouses.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Active duty--Current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, or similar military service of another state.

(2) Armed forces of the United States--The army, navy, air force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(3) Military service member--A person who is on active duty.

(4) Military spouse--A person who is married to a military service member.

(5) Military veteran--A person who has served on active duty and who was discharged or released from active duty.

(b) Alternative licensing procedure. For the purpose of §55.004, Occupations Code, an applicant for a pharmacist's license who is a military service member, military veteran, or military spouse may complete the following alternative procedures for licensing as a pharmacist.

(1) Requirements for licensing by reciprocity. An applicant for licensing by reciprocity who meets all of the following requirements may be granted a temporary license as specified in this subsection prior to completing the NABP application for pharmacist license by reciprocity, and taking and passing the Texas Pharmacy Jurisprudence Examination. The applicant shall:

(A) complete the Texas application for pharmacist license by reciprocity that includes the following:

(i) name;

(ii) addresses, phone numbers, date of birth, and social security number; [however, if an individual is unable to obtain a social security number, an individual taxpayer identification number may be provided in lieu of a social security number along with documentation indicating why the individual is unable to obtain a social security number;] and

(iii) any other information requested on the application;

(B) meet the educational and age requirements as set forth in §283.3 of this title (relating to Educational and Age Requirements);

(C) present to the board proof of initial licensing by examination and proof that any current licenses and any other licenses granted to the applicant by any other state have not been suspended, revoked, canceled, surrendered, or otherwise restricted for any reason;

(D) meet all requirements necessary for the board to access the criminal history records information, including submitting fingerprint information and such criminal history check does not reveal any disposition for a crime specified in §281.64 of this title (relating to Sanctions for Criminal Offenses) indicates a sanction of denial, revocation, or suspension; and

(E) be exempt from the application and examination fees paid to the board set forth in §283.9(a)(2)(A) and (b) of this title (relating to Fee Requirements for Licensure by Examination, Score Transfer and Reciprocity); and

(F) provide documentation to include:

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

(ii) marriage certificate, if a military spouse.

(2) Requirements for an applicant whose Texas pharmacist's license has expired. An applicant whose Texas pharmacist's license has expired within five years preceding the application date:

(A) shall complete the Texas application for licensing that includes the following:

(i) name;

(ii) addresses, phone numbers, date of birth, and social security number; [however, if an individual is unable to obtain a social security number, an individual taxpayer identification number may be provided in lieu of a social security number along with documentation indicating why the individual is unable to obtain a social security number;] and

(iii) any other information requested on the application;

(B) shall provide documentation to include:

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

(ii) marriage certificate, if a military spouse;

(C) shall pay the renewal fee specified in §295.5 of this title (relating to Pharmacist License Renewal Fees); however, the applicant shall be exempt from the fees specified in §295.7(3) of this title (relating to Pharmacist License Renewal).

(D) shall complete approved continuing education requirements according to the following schedule:

(i) if the Texas pharmacist license has been expired for more than one year but less than two years, the applicant shall complete 15 contact hours of approved continuing education;

(ii) if the Texas pharmacist license has been expired for more than two years but less than three years, the applicant shall complete 30 contact hours of approved continuing education; or

(iii) if the Texas pharmacist license has been expired for more than three years but less than five years, the applicant shall complete 45 contact hours of approved continuing education; and

(E) is not required to take the Texas Pharmacy Jurisprudence Examination.

(3) A temporary license issued under this section is valid for no more than six months and may be extended, if disciplinary action is pending, or upon request, as otherwise determined reasonably necessary by the executive director of the board.

(4) A temporary license issued under this section expires within six months of issuance if the individual fails to pass the Texas Pharmacy Jurisprudence Examination within six months or fails to take the Texas Pharmacy Jurisprudence Examination within six months.

(5) An individual may not serve as pharmacist-in-charge of a pharmacy with a temporary license issued under this subsection.

(c) Expedited licensing procedure. For the purpose of §55.005, Occupations Code, an applicant for a pharmacist license who is a military service member, military veteran, or military spouse and who holds a current license as a pharmacist issued by another state may complete the following expedited procedures for licensing as a pharmacist. The applicant shall:

(1) meet the educational and age requirements specified in §283.3 of this title (relating to Educational and Age Requirements);

(2) meet all requirements necessary in order for the board to access the criminal history record information, including submitting fingerprint information and being responsible for all associated costs;

(3) complete the Texas and NABP applications for reciprocity. Any fraudulent statement made in the application for reciprocity is grounds for denial of the application; if such application is granted, any fraudulent statement is grounds for suspension, revocation, and/or cancellation of any license so granted by the board. The Texas application includes the following information:

(A) name;

(B) addresses, phone numbers, date of birth, and social security number; [however, if an individual is unable to obtain a social security number, an individual taxpayer identification number may be provided in lieu of a social security number along with documentation indicating why the individual is unable to obtain a social security number;] and

(C) any other information requested on the application.

(4) shall present to the board proof of initial licensing by examination and proof that their current license and any other license or licenses granted to the applicant by any other state have not been suspended, revoked, canceled, surrendered, or otherwise restricted for any reason;

(5) shall pass the Texas Pharmacy Jurisprudence Examination with a minimum grade of 75. (The passing grade may be used for the purpose of licensure by reciprocity for a period of two years from the date of passing the examination.) Should the applicant fail to achieve a minimum grade of 75 on the Texas Pharmacy Jurisprudence Examination, such applicant, in order to be licensed, shall retake the Texas Pharmacy Jurisprudence Examination as specified in §283.11 of this title (relating to Examination Retake Requirements) until such time as a minimum grade of 75 is achieved; and

(6) shall be exempt from the application and examination fees paid to the board set forth in §283.9(a)(2)(A) and (b).

(d) License renewal. As specified in §55.003, Occupations Code, a military service member who holds a pharmacist license is entitled to two years of additional time to complete any requirements related to the renewal of the military service member's license as follows:

(1) A military service member who fails to renew their pharmacist license in a timely manner because the individual was serving as a military service member shall submit to the board:

(A) name, address, and license number of the pharmacist;

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

(C) a statement requesting up to two years of additional time to complete the renewal.

(2) A military service member specified in paragraph (1) of this subsection shall be exempt from fees specified in §295.7(3) of this title (relating to Pharmacist License Renewal).

(3) A military service member specified in paragraph (1) of this subsection is entitled to two additional years of time to complete the continuing education requirements specified in §295.9 of this title (relating to Continuing Education Requirements).

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 June 13, 2016.

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Gay Dodson, R.Ph.

Executive Director

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8037



CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.1, §291.17

The Texas State Board of Pharmacy proposes amendments to §291.1 concerning Pharmacy License Application and §291.17 concerning Inventory Requirements. The amendments to §291.1, if adopted, eliminate the provisions allowing individuals who are unable to obtain a social security number to provide an individual taxpayer identification number in lieu of a social security number because a social security number is required in order to process criminal background checks. The amendments to §291.17, if adopted, require Class A and Class A-S pharmacies to maintain perpetual inventories for all Schedule II controlled substances; and perpetual inventories will be required to be reconciled monthly.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Dodson has determined that, for each year of the first five-year period the rules will be in effect, the public benefit anticipated as a result of enforcing the amendments will ensure individuals applying for a pharmacist license meet the requirements in order to conduct criminal background checks and pharmacies have accurate inventories for Schedule II controlled substances. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with these sections.

Written comments on the amendments may be submitted to Allison Vordenbaumen Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-6778. Comments must be received by 5:00 p.m., August 1, 2016.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.1. Pharmacy License Application.

(a) To qualify for a pharmacy license, the applicant must submit an application including the following information:

(1) name and address of pharmacy;

(2) type of ownership;

(3) names, addresses, phone numbers, dates of birth, copies of social security cards or other official documents showing the social security numbers as approved by the board, and copies of current driver's licenses, state issued photo identification cards, or passports of all owners, or of all managing officers if the pharmacy is owned by a partnership or corporation[- If an individual is unable to obtain a social security number, an individual taxpayer identification number may be provided in lieu of a social security number along with documentation indicating why the individual is unable to obtain a social security number];

(4) name and license number of the pharmacist-in-charge;

(5) name(s) and license number(s) of other pharmacists employed by the pharmacy;

(6) anticipated date of opening and hours of operation;

(7) copy of lease agreement or if the location of the pharmacy is owned by the applicant, a notarized statement certifying such location ownership;

(8) the signature of the pharmacist-in-charge;

(9) the notarized signature of the owner, or if the pharmacy is owned by a partnership or corporation, the notarized signature of an owner or managing officer;

(10) federal tax ID number of the owner;

(11) description of business services that will be offered;

(12) name and address of malpractice insurance carrier or statement that the business will be self-insured;

(13) documents from a primary wholesaler showing credit worthiness or other documents showing credit worthiness as approved by the board;

(14) official copy of the business formation documents filed with the Secretary of State;

(15) current certificate of Good Standing for the business structure from the state where the business structure is located; and

(16) any other information requested on the application.

(b) The applicant may be required to meet all requirements necessary in order for the Board to access the criminal history record information, including submitting fingerprint information and being responsible for all associated costs. The criminal history information may be required for each individual owner, or if the pharmacy is owned by a partnership or a closely held corporation for each managing officer.

(c) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance of a pharmacy license.

(d) For purpose of this section, managing officers are defined as the top four executive officers, including the corporate officer in charge of pharmacy operations, who are designated by the partnership or corporation to be jointly responsible for the legal operation of the pharmacy.

(e) Prior to the issuance of a license for a pharmacy located in Texas, the board shall conduct an on-site inspection of the pharmacy in the presence of the pharmacist-in-charge and owner or representative of the owner, to ensure that the pharmacist-in-charge and owner can meet the requirements of the Texas Pharmacy Act and Board Rules.

(f) If the applicant holds an active pharmacy license in Texas on the date of application for a new pharmacy license or for other good

cause shown as specified by the board, the board may waive the pre-inspection as set forth in subsection (e) of this section.

§291.17. *Inventory Requirements.*

(a) General requirements.

(1) The pharmacist-in-charge shall be responsible for taking all required inventories, but may delegate the performance of the inventory to another person(s).

(2) The inventory shall be maintained in a written, typewritten, or printed form. An inventory taken by use of an oral recording device must be promptly transcribed.

(3) The inventory shall be kept in the pharmacy and shall be available for inspection for two years.

(4) The inventory shall be filed separately from all other records.

(5) The inventory shall be in a written, typewritten, or printed form and include all stocks of all controlled substances on hand on the date of the inventory (including any which are out-of-date).

(6) The inventory may be taken either as of the opening of business or as of the close of business on the inventory date.

(7) The inventory record shall indicate whether the inventory is taken as of the opening of business or as of the close of business on the inventory date. If the pharmacy is open 24 hours a day, the inventory record shall indicate the time that the inventory was taken.

(8) The person(s) taking the inventory shall make an exact count or measure of all substances listed in Schedule II.

(9) The person(s) taking the inventory shall make an estimated count or measure of all controlled substances listed in Schedule III, IV, and V, unless the container holds more than 1,000 tablets or capsules in which case, an exact count of the contents must be made.

(10) The inventory of Schedule II controlled substances shall be listed separately from the inventory of Schedule III, IV, and V controlled substances.

(11) If the pharmacy maintains a perpetual inventory of any of the drugs required to be inventoried, the perpetual inventory shall be reconciled on the date of the inventory.

(b) Initial inventory.

(1) A new Class A, Class A-S, Class C, Class C-S, or Class F pharmacy shall take an inventory on the opening day of business. Such inventory shall include all stocks of all controlled substances (including any out-of-date drugs).

(2) In the event the Class A, Class A-S, Class C, Class C-S, or Class F pharmacy commences business with no controlled substances on hand, the pharmacy shall record this fact as the initial inventory.

(3) The initial inventory shall serve as the pharmacy's inventory until the next May 1, or until the pharmacy's regular general physical inventory date, at which time the Class A, Class A-S, Class C, Class C-S, or Class F pharmacy shall take an annual inventory as specified in subsection (c) of this section.

(c) Annual inventory.

(1) A Class A, Class A-S, Class C, Class C-S, or Class F pharmacy shall take an inventory on May 1 of each year, or on the pharmacy's regular general physical inventory date. Such inventory may be taken within four days of the specified inventory date and shall

include all stocks of all controlled substances (including out-of-date drugs).

(2) A Class A, Class A-S, Class C, Class C-S, or Class F pharmacy applying for renewal of a pharmacy license shall include as a part of the pharmacy license renewal application a statement attesting that an annual inventory has been conducted, the date of the inventory, and the name of the person taking the inventory.

(3) The person(s) taking the annual inventory and the pharmacist-in-charge shall indicate the time the inventory was taken (as specified in subsection (a)(7) of this section) and shall sign and date the inventory with the date the inventory was taken. The signature of the pharmacist-in-charge and the date of the inventory shall be notarized within three days after the day the inventory is completed, excluding Saturdays, Sundays, and federal holidays.

(4) The annual inventory of a Class C or Class C-S pharmacy shall be maintained in the pharmacy; if an inventory is conducted in other departments within the institution, the inventory of the pharmacy shall be listed separately, as follows:

(A) the inventory of drugs on hand in the pharmacy shall be listed separately from the inventory of drugs on hand in the other areas of the institution; and

(B) the inventory of drugs on hand in all other departments shall be identified by department.

(d) Perpetual inventory.

(1) Effective May 1, 2017, a Class A or Class A-S pharmacy shall maintain a perpetual inventory of all Schedule II controlled substances.

(2) A Class C or Class C-S pharmacy shall maintain a perpetual inventory of all Schedule II controlled substances.

(3) Prior to May 1, 2017, the perpetual inventory shall be reconciled on the date of the annual inventory. Effective May 1, 2017, the perpetual inventory shall be reconciled monthly.

(e) ~~[(d)]~~ Change of ownership.

(1) A Class A, Class A-S, Class C, Class C-S, or Class F pharmacy that changes ownership shall take an inventory of all of the following drugs on the date of the change of ownership. Such inventory shall include all stocks of all controlled substances (including any out-of-date drugs).

(2) Such inventory shall constitute, for the purpose of this section, the closing inventory for the seller and the initial inventory for the buyer.

(3) Transfer of any controlled substances listed in Schedule II shall require the use of official DEA order forms (Form 222).

(4) The person(s) taking the annual inventory and the pharmacist-in-charge shall indicate the time the inventory was taken (as specified in subsection (a)(7) of this section) and shall sign and date the inventory with the date the inventory was taken. The signature of the pharmacist-in-charge and the date of the inventory shall be notarized within three days after the day the inventory is completed, excluding Saturdays, Sundays, and federal holidays.

(f) ~~[(e)]~~ Closed pharmacies.

(1) The pharmacist-in-charge of a Class A, Class A-S, Class C, Class C-S, or Class F pharmacy that ceases to operate as a pharmacy shall forward to the board, within 10 days of the cessation of operation, a statement attesting that an inventory of all controlled substances on hand has been conducted, the date of closing, and a

statement attesting the manner by which the dangerous drugs and controlled substances possessed by such pharmacy were transferred or disposed.

(2) The person(s) taking the annual inventory and the pharmacist-in-charge shall indicate the time the inventory was taken (as specified in subsection (a)(7) of this section) and shall sign and date the inventory with the date the inventory was taken. The signature of the pharmacist-in-charge and the date of the inventory shall be notarized within three days after the day the inventory is completed, excluding Saturdays, Sundays, and federal holidays.

~~[(f) Additional requirements for Class C and Class C-S pharmacies.]~~

~~[(1) Perpetual inventory.]~~

~~[(A) A Class C or Class C-S pharmacy shall maintain a perpetual inventory of all Schedule II controlled substances.]~~

~~[(B) The perpetual inventory shall be reconciled on the date of the annual inventory.]~~

~~[(2) Annual inventory. The inventory of the Class C or Class C-S pharmacy shall be maintained in the pharmacy; if an inventory is conducted in other departments within the institution, the inventory of the pharmacy shall be listed separately, as follows:]~~

~~[(A) the inventory of drugs on hand in the pharmacy shall be listed separately from the inventory of drugs on hand in the other areas of the institution; and]~~

~~[(B) the inventory of drugs on hand in all other departments shall be identified by department.]~~

(g) Change of pharmacist-in-charge of a pharmacy.

(1) On the date of the change of the pharmacist-in-charge of a Class A, Class A-S, Class C, Class C-S, or Class F pharmacy, an inventory shall be taken. Such inventory shall include all stocks of all controlled substances (including any out-of-date drugs).

(2) This inventory shall constitute, for the purpose of this section, the closing inventory of the departing pharmacist-in-charge and the beginning inventory of the incoming pharmacist-in-charge.

(3) If the departing and the incoming pharmacists-in-charge are unable to conduct the inventory together, a closing inventory shall be conducted by the departing pharmacist-in-charge and a new and separate beginning inventory shall be conducted by the incoming pharmacist-in-charge.

(4) The incoming pharmacist-in-charge shall be responsible for notifying the board within 10 days, as specified in §291.3 of this title (relating to Notifications), that a change of pharmacist-in-charge has occurred.

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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Gay Dodson, R.Ph.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: July 24, 2016

For further information, please call: (512) 305-8037



SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.33

The Texas State Board of Pharmacy proposes amendments to §291.33 concerning Operational Standards. The amendments, if adopted, update references which are no longer necessary and clarifying requirements which were duplicative.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will ensure rules are up-to-date and requirements are applicable. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Written comments on the amendments may be submitted to Allison Vordenbaumen Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-6778. Comments must be received by 5:00 p.m., August 1, 2016.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.33. Operational Standards.

(a) Licensing requirements.

(1) A Class A pharmacy shall register annually or biennially with the board on a pharmacy license application provided by the board, following the procedures as specified in §291.1 of this title (relating to Pharmacy License Application).

(2) A Class A pharmacy which changes ownership shall notify the board within ten days of the change of ownership and apply for a new and separate license as specified in §291.3 of this title (relating to Required Notifications).

(3) A Class A pharmacy which changes location and/or name shall notify the board [within ten days of the change and file for an amended license] as specified in §291.3 of this title.

(4) A Class A pharmacy owned by a partnership or corporation which changes managing officers shall notify the board in writing of the names of the new managing officers within ten days of the change, following the procedures as specified in §291.3 of this title.

(5) A Class A pharmacy shall notify the board in writing within ten days of closing, following the procedures as specified in §291.5 of this title (relating to Closing a Pharmacy).

(6) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(7) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance and renewal of a license and the issuance of an amended license.

(8) A Class A pharmacy, licensed under the provisions of the Act, §560.051(a)(1), which also operates another type of pharmacy which would otherwise be required to be licensed under the Act, §560.051(a)(2) concerning Nuclear Pharmacy (Class B), is not required to secure a license for such other type of pharmacy; provided, however, such licensee is required to comply with the provisions of Subchapter C of this chapter (relating to Nuclear Pharmacy (Class B)), to the extent such sections are applicable to the operation of the pharmacy.

(9) A Class A pharmacy engaged in the compounding of non-sterile preparations shall comply with the provisions of §291.131 of this title (relating to Pharmacies Compounding Non-Sterile Preparations).

~~[(10) Prior to August 31, 2014, a Class A pharmacy engaged in the compounding of sterile preparations shall comply with the provisions of §291.133 of this title (relating to Pharmacies Compounding Sterile Preparations).]~~

(10) [(11)] A [Effective August 31, 2014, a] Class A pharmacy shall not compound sterile preparations [unless the pharmacy has applied for and obtained a Class A-S pharmacy license].

(11) [(12)] A Class A pharmacy engaged in the provision of remote pharmacy services, including storage and dispensing of prescription drugs, shall comply with the provisions of §291.121 of this title (relating to Remote Pharmacy Services).

(12) [(13)] Class A pharmacy engaged in centralized prescription dispensing and/or prescription drug or medication order processing shall comply with the provisions of §291.123 of this title (relating to Centralized Prescription Drug or Medication Order Processing) and/or §291.125 of this title (relating to Centralized Prescription Dispensing).

(b) (No change.)

(c) Prescription dispensing and delivery.

(1) Patient counseling and provision of drug information.

(A) To optimize drug therapy, a pharmacist shall communicate to the patient or the patient's agent, information about the prescription drug or device which in the exercise of the pharmacist's professional judgment the pharmacist deems significant, such as the following:

(i) name and description of the drug or device;

(ii) dosage form, dosage, route of administration, and duration of drug therapy;

(iii) special directions and precautions for preparation, administration, and use by the patient;

(iv) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

(v) techniques for self-monitoring of drug therapy;

(vi) proper storage;

(vii) refill information; and

(viii) action to be taken in the event of a missed dose.

(B) Such communication shall be:

(i) provided to new and existing patients of a pharmacy with each new prescription drug order. A new prescription drug order is one that has not been dispensed by the pharmacy to the patient in the same dosage and strength within the last year;

(ii) provided for any prescription drug order dispensed by the pharmacy on the request of the patient or patient's agent;

(iii) communicated orally in person unless the patient or patient's agent is not at the pharmacy or a specific communication barrier prohibits such oral communication;

(iv) documented by recording the initials or identification code of the pharmacist providing the counseling in the prescription dispensing record as follows:

(I) on the original hard-copy prescription, provided the counseling pharmacist clearly records his or her initials on the prescription for the purpose of identifying who provided the counseling;

(II) in the pharmacy's data processing system;

(III) in an electronic logbook; or

(IV) in a hard-copy log; and

(v) reinforced with written information relevant to the prescription and provided to the patient or patient's agent. The following is applicable concerning this written information.

(I) Written information must be in plain language designed for the patient and printed in an easily readable font comparable to but no smaller than ten-point Times Roman. This information may be provided to the patient in an electronic format, such as by e-mail, if the patient or patient's agent requests the information in an electronic format and the pharmacy documents the request.

(II) When a compounded preparation is dispensed, information shall be provided for the major active ingredient(s), if available.

(III) For new drug entities, if no written information is initially available, the pharmacist is not required to provide information until such information is available, provided:

(-a-) the pharmacist informs the patient or the patient's agent that the product is a new drug entity and written information is not available;

(-b-) the pharmacist documents the fact that no written information was provided; and

(-c-) if the prescription is refilled after written information is available, such information is provided to the patient or patient's agent.

(IV) The written information accompanying the prescription or the prescription label shall contain the statement "Do not flush unused medications or pour down a sink or drain." A drug product on a list developed by the Federal Food and Drug Administration of medicines recommended for disposal by flushing is not required to bear this statement.

(C) Only a pharmacist may verbally provide drug information to a patient or patient's agent and answer questions concerning prescription drugs. Non-pharmacist personnel may not ask questions of a patient or patient's agent which are intended to screen and/or limit interaction with the pharmacist.

(D) Nothing in this subparagraph shall be construed as requiring a pharmacist to provide consultation when a patient or patient's agent refuses such consultation. The pharmacist shall document such refusal for consultation.

(E) In addition to the requirements of subparagraphs (A) - (D) of this paragraph, if a prescription drug order is delivered to the patient at the pharmacy, the following is applicable.

(i) So that a patient will have access to information concerning his or her prescription, a prescription may not be delivered to a patient unless a pharmacist is in the pharmacy, except as provided in subsection (b)(3) of this section.

(ii) Any prescription delivered to a patient when a pharmacist is not in the pharmacy must meet the requirements described in subparagraph (F) of this paragraph.

(F) In addition to the requirements of subparagraphs (A) - (D) of this paragraph, if a prescription drug order is delivered to the patient or his or her agent at the patient's residence or other designated location, the following is applicable.

(i) The information as specified in subparagraph (A) of this paragraph shall be delivered with the dispensed prescription in writing.

(ii) If prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacy shall provide a toll-free telephone line which is answered during normal business hours to enable communication between the patient and a pharmacist.

(iii) The pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container in both English and Spanish the local and if applicable, toll-free telephone number of the pharmacy and the statement: "Written information about this prescription has been provided for you. Please read this information before you take the medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions at (insert the pharmacy's local and toll-free telephone numbers)."

(iv) The pharmacy shall maintain and use adequate storage or shipment containers and use shipping processes to ensure drug stability and potency. Such shipping processes shall include the use of appropriate packaging material and/or devices to ensure that the drug is maintained at an appropriate temperature range to maintain the integrity of the medication throughout the delivery process.

(v) The pharmacy shall use a delivery system, which is designed to assure that the drugs are delivered to the appropriate patient.

(G) The provisions of this paragraph do not apply to patients in facilities where drugs are administered to patients by a person required to do so by the laws of the state (i.e., nursing homes).

(2) Pharmaceutical care services.

(A) Drug regimen review.

(i) For the purpose of promoting therapeutic appropriateness, a pharmacist shall, prior to or at the time of dispensing a prescription drug order, review the patient's medication record. Such review shall at a minimum identify clinically significant:

(I) known allergies;

(II) rational therapy-contraindications;

(III) reasonable dose and route of administration;

(IV) reasonable directions for use;

(V) duplication of therapy;

(VI) drug-drug interactions;

- (VII) drug-food interactions;
- (VIII) drug-disease interactions;
- (IX) adverse drug reactions; and
- (X) proper utilization, including overutilization

or underutilization.

(ii) Upon identifying any clinically significant conditions, situations, or items listed in clause (i) of this subparagraph, the pharmacist shall take appropriate steps to avoid or resolve the problem including consultation with the prescribing practitioner. The pharmacist shall document such occurrences as specified in subparagraph (C) of this paragraph.

(iii) The drug regimen review may be conducted by remotely accessing the pharmacy's electronic data base from outside the pharmacy by:

(I) an individual Texas licensed pharmacist employee of the pharmacy provided the pharmacy establishes controls to protect the privacy of the patient and the security of confidential records; or

(II) a pharmacist employed by a Class E pharmacy provided the pharmacies have entered into a written contract or agreement which outlines the services to be provided and the responsibilities and accountabilities of each pharmacy in compliance with federal and state laws and regulations.

(iv) Prior to dispensing, any questions regarding a prescription drug order must be resolved with the prescriber and written documentation of these discussions made and maintained as specified in subparagraph (C) of this paragraph.

(B) Other pharmaceutical care services which may be provided by pharmacists include, but are not limited to, the following:

- (i) managing drug therapy as delegated by a practitioner as allowed under the provisions of the Medical Practices Act;
- (ii) administering immunizations and vaccinations under written protocol of a physician;
- (iii) managing patient compliance programs;
- (iv) providing preventative health care services; and
- (v) providing case management of patients who are being treated with high-risk or high-cost drugs, or who are considered "high risk" due to their age, medical condition, family history, or related concern.

(C) Documentation of consultation. When a pharmacist consults a prescriber as described in subparagraph (A) of this paragraph the pharmacist shall document on the prescription [hard-copy] or in the pharmacy's data processing system associated with the prescription such occurrences and shall include the following information:

- (i) date the prescriber was consulted;
- (ii) name of the person communicating the prescriber's instructions;
- (iii) any applicable information pertaining to the consultation; and
- (iv) initials or identification code of the pharmacist performing the consultation clearly recorded for the purpose of identifying the pharmacist who performed the consultation [if on the information is recorded on the hard-copy prescription].

(3) Substitution of generically equivalent drugs or interchangeable biological products. A pharmacist may dispense a generically equivalent drug or interchangeable biological product and shall comply with the provisions of §309.3 of this title (relating to Substitution Requirements).

(4) Substitution of dosage form.

(A) As specified in §562.012 of the Act, a pharmacist may dispense a dosage form of a drug product different from that prescribed, such as a tablet instead of a capsule or liquid instead of tablets, provided:

- (i) the patient consents to the dosage form substitution; and
- (ii) the dosage form so dispensed:
 - (I) contains the identical amount of the active ingredients as the dosage prescribed for the patient;
 - (II) is not an enteric-coated or time release product;
 - (III) does not alter desired clinical outcomes;

(B) Substitution of dosage form may not include the substitution of a product that has been compounded by the pharmacist unless the pharmacist contacts the practitioner prior to dispensing and obtains permission to dispense the compounded product.

(5) Therapeutic Drug Interchange. A switch to a drug providing a similar therapeutic response to the one prescribed shall not be made without prior approval of the prescribing practitioner. This paragraph does not apply to generic substitution. For generic substitution, see the requirements of paragraph (3) of this subsection.

(A) The patient shall be notified of the therapeutic drug interchange prior to, or upon delivery, of the dispensed prescription to the patient. Such notification shall include:

- (i) a description of the change;
- (ii) the reason for the change;
- (iii) whom to notify with questions concerning the change; and
- (iv) instructions for return of the drug if not wanted by the patient.

(B) The pharmacy shall maintain documentation of patient notification of therapeutic drug interchange which shall include:

- (i) the date of the notification;
- (ii) the method of notification;
- (iii) a description of the change; and
- (iv) the reason for the change.

(C) The provisions of this paragraph do not apply to prescriptions for patients in facilities where drugs are administered to patients by a person required to do so by the laws of this state if the practitioner issuing the prescription has agreed to use of a formulary that includes a listing of therapeutic interchanges that the practitioner has agreed to allow. The pharmacy must maintain a copy of the formulary including a list of the practitioners that have agreed to the formulary and the signature of these practitioners.

(6) Prescription containers.

(A) A drug dispensed pursuant to a prescription drug order shall be dispensed in a child-resistant container unless:

(i) the patient or the practitioner requests the prescription not be dispensed in a child-resistant container; or

(ii) the product is exempted from requirements of the Poison Prevention Packaging Act of 1970.

(B) A drug dispensed pursuant to a prescription drug order shall be dispensed in an appropriate container as specified on the manufacturer's container.

(C) Prescription containers or closures shall not be re-used. However, if a patient or patient's agent has difficulty reading or understanding a prescription label, a prescription container may be reused provided:

(i) the container is designed to provide audio-recorded information about the proper use of the prescription medication;

(ii) the container is reused for the same patient;

(iii) the container is cleaned; and

(iv) a new safety closure is used each time the prescription container is reused.

(7) Labeling.

(A) At the time of delivery of the drug, the dispensing container shall bear a label in plain language and printed in an easily readable font size, unless otherwise specified, with at least the following information:

(i) name, address and phone number of the pharmacy;

(ii) unique identification number of the prescription that is printed in an easily readable font size comparable to but no smaller than ten-point Times Roman;

(iii) date the prescription is dispensed;

(iv) initials or an identification code of the dispensing pharmacist;

(v) name of the prescribing practitioner;

(vi) if the prescription was signed by a pharmacist, the name of the pharmacist who signed the prescription for a dangerous drug under delegated authority of a physician as specified in Subtitle B, Chapter 157, Occupations Code;

(vii) name of the patient or if such drug was prescribed for an animal, the species of the animal and the name of the owner that is printed in an easily readable font size comparable to but no smaller than ten-point Times Roman. The name of the patient's partner or family member is not required to be on the label of a drug prescribed for a partner for a sexually transmitted disease or for a patient's family members if the patient has an illness determined by the Centers for Disease Control and Prevention, the World Health Organization, or the Governor's office to be pandemic;

(viii) instructions for use that is printed in an easily readable font comparable to but no smaller than ten-point Times Roman;

(ix) quantity dispensed;

(x) appropriate ancillary instructions such as storage instructions or cautionary statements such as warnings of potential harmful effects of combining the drug product with any product containing alcohol;

(xi) if the prescription is for a Schedules II - IV controlled substance, the statement "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed";

(xii) if the pharmacist has selected a generically equivalent drug or interchangeable biological product pursuant to the provisions of the Act, Chapter 562, the statement "Substituted for Brand Prescribed" or "Substituted for 'Brand Name'" where "Brand Name" is the actual name of the brand name product prescribed;

(xiii) the name and strength of the actual drug or biological product dispensed that is printed in an easily readable [font] size comparable to but no smaller than ten-point Times Roman, unless otherwise directed by the prescribing practitioner;

(I) The name shall be either:

(-a-) the brand name; or

(-b-) if no brand name, then the generic drug or interchangeable biological product name and name of the manufacturer or distributor of such generic drug or interchangeable biological product. (The name of the manufacturer or distributor may be reduced to an abbreviation or initials, provided the abbreviation or initials are sufficient to identify the manufacturer or distributor. For combination drug products or non-sterile compounded drug preparations having no brand name, the principal active ingredients shall be indicated on the label.)

(II) Except as provided in clause (xii) of this subparagraph, the brand name of the prescribed drug or biological product shall not appear on the prescription container label unless it is the drug product actually dispensed.

(xiv) if the drug is dispensed in a container other than the manufacturer's original container, the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacturer, the beyond-use-date shall be one year from the date the drug is dispensed or the manufacturer's expiration date, whichever is earlier. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication; and

(xv) either on the prescription label or the written information accompanying the prescription, the statement "Do not flush unused medications or pour down a sink or drain." A drug product on a list developed by the Federal Food and Drug Administration of medicines recommended for disposal by flushing is not required to bear this statement.

(B) If the prescription label required in subparagraph (A) of this paragraph is printed in a type size smaller than ten-point Times Roman, the pharmacy shall provide the patient written information containing the information as specified in subparagraph (A) of this paragraph in an easily readable font comparable to but no smaller than ten-point Times Roman.

(C) The label is not required to include the initials or identification code of the dispensing pharmacist as specified in subparagraph (A) of this paragraph if the identity of the dispensing pharmacist is recorded in the pharmacy's data processing system. The record of the identity of the dispensing pharmacist shall not be altered in the pharmacy's data processing system.

(D) The dispensing container is not required to bear the label as specified in subparagraph (A) of this paragraph if:

(i) the drug is prescribed for administration to an ultimate user who is institutionalized in a licensed health care institution (e.g., nursing home, hospice, hospital);

(ii) no more than a 90-day supply is dispensed at one time;

(iii) the drug is not in the possession of the ultimate user prior to administration;

(iv) the pharmacist-in-charge has determined that the institution:

(I) maintains medication administration records which include adequate directions for use for the drug(s) prescribed;

(II) maintains records of ordering, receipt, and administration of the drug(s); and

(III) provides for appropriate safeguards for the control and storage of the drug(s); and

(v) the dispensing container bears a label that adequately:

(I) identifies the:
(-a-) pharmacy by name and address;
(-b-) unique identification number of the prescription;

(-c-) name and strength of the drug dispensed;

(-d-) name of the patient; and

(-e-) name of the prescribing practitioner or, if applicable, the name of the advanced practice nurse, physician assistant, or pharmacist who signed the prescription drug order;

(II) if the drug is dispensed in a container other than the manufacturer's original container, specifies the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacturer, the beyond-use-date shall be one year from the date the drug is dispensed or the manufacturer's expiration date, whichever is earlier. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication; and

(III) sets forth the directions for use and cautionary statements, if any, contained on the prescription drug order or required by law.

(8) Returning Undelivered Medication to Stock.

(A) As specified in §431.021(w), Health and Safety Code, a pharmacist may not accept an unused prescription or drug, in whole or in part, for the purpose of resale or re-dispensing to any person after the prescription or drug has been originally dispensed, or sold except as provided in §291.8 of this title (relating to Return of Prescription Drugs). Prescriptions that have not been picked up by or delivered to the patient or patient's agent may be returned to the pharmacy's stock for dispensing.

(B) A pharmacist shall evaluate the quality and safety of the prescriptions to be returned to stock.

(C) Prescriptions returned to stock for dispensing shall not be mixed within the manufacturer's container.

(D) Prescriptions returned to stock for dispensing should be used as soon as possible and stored in the dispensing container. The expiration date of the medication shall be the lesser of one year from the dispensing date on the prescription label or

the manufacturer's expiration date if dispensed in the manufacturer's original container.

(E) At the time of dispensing, the prescription medication shall be placed in a new prescription container and not dispensed in the previously labeled container unless the label can be completely removed. However, if the medication is in the manufacturer's original container, the pharmacy label must be removed so that no confidential patient information is released.

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

(h) Customized patient medication packages.

(1) Purpose. In lieu of dispensing two or more prescribed drug products in separate containers, a pharmacist may, with the consent of the patient, the patient's caregiver, or the prescriber, provide a customized patient medication package (patient med-pak).

(2) Label.

(A) The patient med-pak shall bear a label stating:

(i) the name of the patient;

(ii) the unique identification number for the patient med-pak itself and a separate unique identification number for each of the prescription drug orders for each of the drug products contained therein;

(iii) the name, strength, physical description or identification, and total quantity of each drug product contained therein;

(iv) the directions for use and cautionary statements, if any, contained in the prescription drug order for each drug product contained therein;

(v) if applicable, a warning of the potential harmful effect of combining any form of alcoholic beverage with any drug product contained therein;

(vi) any storage instructions or cautionary statements required by the official compendia;

(vii) the name of the prescriber of each drug product;

(viii) the name, address, and telephone number of the pharmacy;

(ix) the initials or an identification code of the dispensing pharmacist;

(x) the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacturer, the beyond-use-date shall be one year from the date the med-pak is dispensed or the earliest manufacturer's expiration date for a product contained in the med-pak if it is less than one-year from the date dispensed. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication;

(xi) either on the prescription label or the written information accompanying the prescription, the statement "Do not flush unused medications or pour down a sink or drain." A drug product on a list developed by the Federal Food and Drug Administration of medicines recommended for disposal by flushing is not required to bear this statement; and

(xii) any other information, statements, or warnings required for any of the drug products contained therein.

(B) If the patient med-pak allows for the removal or separation of the intact containers therefrom, each individual container shall bear a label identifying each of the drug product contained therein.

(C) The dispensing container is not required to bear the label as specified in subparagraph (A) of this paragraph if:

(i) the drug is prescribed for administration to an ultimate user who is institutionalized in a licensed health care institution (e.g., nursing home, hospice, hospital);

(ii) no more than a 90-day supply is dispensed at one time;

(iii) the drug is not in the possession of the ultimate user prior to administration;

(iv) the pharmacist-in-charge has determined that the institution:

(I) maintains medication administration records which include adequate directions for use for the drug(s) prescribed;

(II) maintains records of ordering, receipt, and administration of the drug(s); and

(III) provides for appropriate safeguards for the control and storage of the drug(s); and

(v) the dispensing container bears a label that adequately:

(I) identifies the:

(-a-) pharmacy by name and address;

~~(-b-) name of the patient; and~~

(-b-) ~~(-e-)~~ name and strength of each drug product dispensed;

(-c-) ~~(-d-)~~ name of the patient; and

(-d-) ~~(-e-)~~ name of the prescribing practitioner of each drug product, or the pharmacist who signed the prescription drug order;

(II) the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacturer, the beyond-use-date shall be one year from the date the med-pak is dispensed or the earliest manufacturer's expiration date for a product contained in the med-pak if it is less than one-year from the date dispensed. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication; and

(III) for each drug product sets forth the directions for use and cautionary statements, if any, contained on the prescription drug order or required by law.

(3) Labeling. The patient med-pak shall be accompanied by a patient package insert, in the event that any drug contained therein is required to be dispensed with such insert as accompanying labeling. Alternatively, such required information may be incorporated into a single, overall educational insert provided by the pharmacist for the total patient med-pak.

(4) Packaging. In the absence of more stringent packaging requirements for any of the drug products contained therein, each container of the patient med-pak shall comply with official packaging standards. Each container shall be either not reclosable or so designed as to show evidence of having been opened.

(5) Guidelines. It is the responsibility of the dispensing pharmacist when preparing a patient med-pak, to take into account any

applicable compendial requirements or guidelines and the physical and chemical compatibility of the dosage forms placed within each container, as well as any therapeutic incompatibilities that may attend the simultaneous administration of the drugs.

(6) Recordkeeping. In addition to any individual prescription filing requirements, a record of each patient med-pak shall be made and filed. Each record shall contain, as a minimum:

(A) the name and address of the patient;

(B) the unique identification number for the patient med-pak itself and a separate unique identification number for each of the prescription drug orders for each of the drug products contained therein;

(C) the name of the manufacturer or distributor and lot number for each drug product contained therein;

(D) information identifying or describing the design, characteristics, or specifications of the patient med-pak sufficient to allow subsequent preparation of an identical patient med-pak for the patient;

(E) the date of preparation of the patient med-pak and the beyond-use date that was assigned;

(F) any special labeling instructions; and

(G) the initials or an identification code of the dispensing pharmacist.

(7) The patient med-pak label is not required to include the initials or identification code of the dispensing pharmacist as specified in paragraph (2)(A) of this subsection if the identity of the dispensing pharmacist is recorded in the pharmacy's data processing system. The record of the identity of the dispensing pharmacist shall not be altered in the pharmacy's data processing system.

(i) Automated devices and systems.

(1) Automated compounding or counting devices. If a pharmacy uses automated compounding or counting devices:

(A) the pharmacy shall have a method to calibrate and verify the accuracy of the automated compounding or counting device and document the calibration and verification on a routine basis;

(B) the devices may be loaded with bulk or unlabeled drugs only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist;

(C) the label of an automated compounding or counting device container shall indicate the brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(D) records of loading bulk or unlabeled drugs into an automated compounding or counting device shall be maintained to show:

(i) name of the drug, strength, and dosage form;

(ii) manufacturer or distributor;

(iii) manufacturer's lot number;

(iv) manufacturer's expiration date;

(v) date of loading;

(vi) name, initials, or electronic signature of the person loading the automated compounding or counting device; and

(vii) signature or electronic signature of the responsible pharmacist; and

(E) the automated compounding and counting device shall not be used until a pharmacist verifies that the system is properly loaded and affixes his or her signature to the record as specified in subparagraph (D) of this paragraph.

(2) Automated pharmacy dispensing systems.

(A) Authority to use automated pharmacy dispensing systems. A pharmacy may use an automated pharmacy dispensing system to fill prescription drug orders provided that:

(i) the pharmacist-in-charge is responsible for the supervision of the operation of the system;

(ii) the automated pharmacy dispensing system has been tested by the pharmacy and found to dispense accurately. The pharmacy shall make the results of such testing available to the board upon request; and

(iii) the pharmacy will make the automated pharmacy dispensing system available for inspection by the board for the purpose of validating the accuracy of the system.

(B) Quality assurance program. A pharmacy which uses an automated pharmacy dispensing system to fill prescription drug orders shall operate according to a written program for quality assurance of the automated pharmacy dispensing system which:

(i) requires continuous monitoring of the automated pharmacy dispensing system; and

(ii) establishes mechanisms and procedures to test the accuracy of the automated pharmacy dispensing system at least every six months and whenever any upgrade or change is made to the system and documents each such activity.

(C) Policies and procedures of operation.

(i) When an automated pharmacy dispensing system is used to fill prescription drug orders, it shall be operated according to written policies and procedures of operation. The policies and procedures of operation shall:

(I) provide for a pharmacist's review, approval, and accountability for the transmission of each original or new prescription drug order to the automated pharmacy dispensing system before the transmission is made;

(II) provide for access to the automated pharmacy dispensing system for stocking and retrieval of medications which is limited to licensed healthcare professionals or pharmacy technicians acting under the supervision of a pharmacist;

(III) require prior to use, that a pharmacist checks, verifies, and documents that the automated pharmacy dispensing system has been accurately filled each time the system is stocked;

(IV) provide for an accountability record to be maintained which documents all transactions relative to stocking and removing medications from the automated pharmacy dispensing system;

(V) require a prospective drug regimen review is conducted as specified in subsection (c)(2) of this section; and

(VI) establish and make provisions for documentation of a preventative maintenance program for the automated pharmacy dispensing system.

(ii) A pharmacy which uses an automated pharmacy dispensing system to fill prescription drug orders shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(D) Recovery Plan. A pharmacy which uses an automated pharmacy dispensing system to fill prescription drug orders shall maintain a written plan for recovery from a disaster or any other situation which interrupts the ability of the automated pharmacy dispensing system to provide services necessary for the operation of the pharmacy. The written plan for recovery shall include:

(i) planning and preparation for maintaining pharmacy services when an automated pharmacy dispensing system is experiencing downtime;

(ii) procedures for response when an automated pharmacy dispensing system is experiencing downtime; and

(iii) procedures for the maintenance and testing of the written plan for recovery.

(E) Final check of prescriptions dispensed using an automated pharmacy dispensing system. For the purpose of §291.32(c)(2)(D) of this title (relating to Personnel), a pharmacist must perform the final check of all prescriptions prior to delivery to the patient to ensure that the prescription is dispensed accurately as prescribed.

(i) This final check shall be considered accomplished if:

(I) a check of the final product is conducted by a pharmacist after the automated pharmacy dispensing system has completed the prescription and prior to delivery to the patient; or

(II) the following checks are conducted by a pharmacist:

(-a-) if the automated pharmacy dispensing system contains bulk stock drugs, a pharmacist verifies that those drugs have been accurately stocked as specified in subparagraph (C)(i)(III) of this paragraph; and

(-b-) a pharmacist checks the accuracy of the data entry of each original or new prescription drug order entered into the automated pharmacy dispensing system.

(ii) If the final check is accomplished as specified in clause (i)(II) of this subparagraph, the following additional requirements must be met.

(I) The dispensing process must be fully automated from the time the pharmacist releases the prescription to the automated pharmacy dispensing system until a completed, labeled prescription ready for delivery to the patient is produced.

(II) The pharmacy has conducted initial testing and has a continuous quality assurance program which documents that the automated pharmacy dispensing system dispenses accurately as specified in subparagraphs (A) and (B) of this paragraph.

(III) The automated pharmacy dispensing system documents and maintains:

(-a-) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in clause (i)(II) of this subparagraph; and

(-b-) the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist, pharmacy technician, or pharmacy technician trainee who performs any other portion of the dispensing process.

(IV) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated pharmacy dispensing system at least every month rather than every six months as specified in subparagraph (B) of this paragraph.

(3) Automated checking device.

(A) For the purpose of §291.32(c)(2)(D) of this title, the final check of a dispensed prescription shall be considered accomplished using an automated checking device provided:

(i) a check of the final product is conducted by a pharmacist prior to delivery to the patient or the following checks are performed by a pharmacist:

(I) the prepackaged drug used to fill the order is checked by a pharmacist who verifies that the drug is labeled and packaged accurately; and

(II) a pharmacist checks the accuracy of each original or new prescription drug order.

(ii) the prescription is dispensed, labeled, and made ready for delivery to the patient in compliance with Class A (Community) Pharmacy rules; and

(iii) prior to delivery to the patient:

(I) the automated checking device confirms that the correct drug and strength has been labeled with the correct label for the correct patient; and

(II) a pharmacist performs all other duties required to ensure that the prescription has been dispensed safely and accurately as prescribed.

(B) If the final check is accomplished as specified in subparagraph (A) of this paragraph, the following additional requirements must be met.

(i) The pharmacy has conducted initial testing of the automated checking device and has a continuous quality assurance program which documents that the automated checking device accurately confirms that the correct drug and strength has been labeled with the correct label for the correct patient.

(ii) The pharmacy documents and maintains:

(I) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in subparagraph (A)(i) of this paragraph; and

(II) the name(s) initials, or identification code(s) and specific activity(ies) of each pharmacist or pharmacy technician who perform any other portion of the dispensing process.

(iii) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated checking device at least monthly.

(4) Automated storage and distribution device. A pharmacy may use an automated storage and distribution device to deliver a previously verified prescription to a patient or patient's agent when the pharmacy is open or when the pharmacy is closed as specified in subsection (b)(3)(B)(iii) of this section, provided:

(A) the device is used to deliver refills of prescription drug orders and shall not be used to deliver new prescriptions as defined by §291.31(28) [§291.31(29)] of this title (relating to Definitions);

(B) the automated storage and distribution device may not be used to deliver a controlled substance;

(C) drugs stored in the automated storage and distribution device are stored at proper temperatures;

(D) the patient or patient's agent is given the option to use the system;

(E) the patient or patient's agent has access to a pharmacist for questions regarding the prescription at the pharmacy where the automated storage and distribution device is located, by a telephone available at the pharmacy that connects directly to another pharmacy, or by a telephone available at the pharmacy and a posted telephone number to reach another pharmacy;

(F) the pharmacist-in-charge is responsible for the supervision of the operation of the system;

(G) the automated storage and distribution device has been tested by the pharmacy and found to dispense prescriptions accurately. The pharmacy shall make the results of such testing available to the board upon request;

(H) the automated storage and distribution device may be loaded with previously verified prescriptions only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist;

(I) the pharmacy will make the automated storage and distribution device available for inspection by the board;

(J) the automated storage and distribution device is located within the pharmacy building whereby pharmacy staff has access to the device from within the prescription department and patients have access to the device from outside the prescription department. The device may not be located on an outside wall of the pharmacy and may not be accessible from a drive-thru;

(K) the automated storage and distribution device is secure from access and removal of prescription drug orders by unauthorized individuals;

(L) the automated storage and distribution device has adequate security system to prevent unauthorized access and to maintain patient confidentiality; and

(M) the automated storage and distribution device records a digital image of the individual accessing the device to pick-up a prescription and such record is maintained by the pharmacy for two years.

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

Filed with the Office of the Secretary of State on June 13, 2016.

TRD-201602964

Gay Dodson, R.Ph.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: July 24, 2016

For further information, please call: (512) 305-8037



SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §291.76

The Texas State Board of Pharmacy proposes amendments to §291.76, concerning Class C Pharmacies Located in a

Freestanding Ambulatory Surgical Center. The amendments, if adopted, clarify recordkeeping requirements and allow pharmacists to record certain information in the patient's chart in lieu of keeping a separate log.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will ensure appropriate records are maintained by Class C Pharmacies located in freestanding ambulatory surgical centers. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Written comments on the amendments may be submitted to Allison Vordenbaumen Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-6778. Comments must be received by 5:00 p.m., August 1, 2016.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.76. *Class C Pharmacies Located in a Freestanding Ambulatory Surgical Center.*

- (a) - (c) (No change.)
- (d) Operational standards.
- (1) Licensing requirements.

(A) An ASC pharmacy shall register annually or biennially with the board on a pharmacy license application provided by the board, following the procedures specified in §291.1 of this title (relating to Pharmacy License Application).

(B) An ASC pharmacy which changes ownership shall notify the board within 10 days of the change of ownership and apply for a new and separate license as specified in §291.3 of this title (relating to Required Notifications).

(C) An ASC pharmacy which changes location and/or name shall notify the board of the change within 10 days and file for an amended license as specified in §291.3 of this title.

(D) An ASC pharmacy owned by a partnership or corporation which changes managing officers shall notify the board in writing of the names of the new managing officers within 10 days of the change, following the procedures in §291.3 of this title.

(E) An ASC pharmacy shall notify the board in writing within 10 days of closing, following the procedures in §291.5 of this title (relating to Closing a Pharmacy).

(F) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for issuance and renewal of a license and the issuance of an amended license.

(G) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(H) An ASC pharmacy, licensed under the Act, §560.051(a)(3), concerning institutional pharmacy (Class C), which also operates another type of pharmacy which would otherwise be required to be licensed under the Act, §560.051(a)(1), concerning community pharmacy (Class A), or the Act, §560.051(a)(2), concerning nuclear pharmacy (Class B), is not required to secure a license for the other type of pharmacy; provided, however, such license is required to comply with the provisions of §291.31 of this title (relating to Definitions), §291.32 of this title (relating to Personnel), §291.33 of this title (relating to Operational Standards), §291.34 of this title (relating to Records), and §291.35 of this title (relating to Official Prescription Records), or §291.51 of this title (relating to Purpose), §291.52 of this title (relating to Definitions), §291.53 of this title (relating to Personnel), §291.54 of this title (relating to Operational Standards), and §291.55 of this title (relating to Records), contained in Nuclear Pharmacy (Class B), to the extent such sections are applicable to the operation of the pharmacy.

(I) An ASC pharmacy engaged in the compounding of non-sterile preparations shall comply with the provisions of §291.131 of this title.

(J) ASC pharmacy personnel shall not compound sterile preparations unless the pharmacy has applied for and obtained a Class C-S pharmacy license.

(K) An ASC pharmacy engaged in the provision of remote pharmacy services, including storage and dispensing of prescription drugs, shall comply with the provisions of §291.121 of this title (relating to Remote Pharmacy Services).

(L) An ASC pharmacy engaged in centralized prescription dispensing and/or prescription drug or medication order processing shall comply with the provisions of §291.123 of this title (relating to Centralized Prescription Drug or Medication Order Processing) and/or §291.125 of this title (relating to Centralized Prescription Dispensing).

(2) Environment.

(A) General requirements.

(i) Each ambulatory surgical center shall have a designated work area separate from patient areas, and which shall have space adequate for the size and scope of pharmaceutical services and shall have adequate space and security for the storage of drugs.

(ii) The ASC pharmacy shall be arranged in an orderly fashion and shall be kept clean. All required equipment shall be clean and in good operating condition.

(B) Special requirements.

(i) The ASC pharmacy shall have locked storage for Schedule II controlled substances and other controlled drugs requiring additional security.

(ii) The ASC pharmacy shall have a designated area for the storage of poisons and externals separate from drug storage areas.

(C) Security.

(i) The pharmacy and storage areas for prescription drugs and/or devices shall be enclosed and capable of being locked by key, combination, or other mechanical or electronic means, so as to prohibit access by unauthorized individuals. Only individuals authorized

by the pharmacist-in-charge may enter the pharmacy or have access to storage areas for prescription drugs and/or devices.

(ii) The pharmacist-in-charge shall consult with ASC personnel with respect to security of the drug storage areas, including provisions for adequate safeguards against theft or diversion of dangerous drugs and controlled substances, and to security of records for such drugs.

(iii) The pharmacy shall have locked storage for Schedule II controlled substances and other drugs requiring additional security.

(3) Equipment and supplies. Ambulatory surgical centers supplying drugs for postoperative use shall have the following equipment and supplies:

(A) data processing system including a printer or comparable equipment;

(B) adequate supply of child-resistant, moisture-proof, and light-proof containers; and

(C) adequate supply of prescription labels and other applicable identification labels.

(4) Library. A reference library shall be maintained that includes the following in hard-copy or electronic format and that pharmacy personnel shall be capable of accessing at all times:

(A) current copies of the following:

(i) Texas Pharmacy Act and rules;

(ii) Texas Dangerous Drug Act and rules;

(iii) Texas Controlled Substances Act and rules;

(iv) Federal Controlled Substances Act and rules or official publication describing the requirements of the Federal Controlled Substances Act and rules;

(B) at least one current or updated general drug information reference which is required to contain drug interaction information including information needed to determine severity or significance of the interaction and appropriate recommendations or actions to be taken; and

(C) basic antidote information and the telephone number of the nearest regional poison control center.

(5) Drugs.

(A) Procurement, preparation, and storage.

(i) The pharmacist-in-charge shall have the responsibility for the procurement and storage of drugs, but may receive input from other appropriate staff of the facility, relative to such responsibility.

(ii) The pharmacist-in-charge shall have the responsibility for determining specifications of all drugs procured by the facility.

(iii) ASC pharmacies may not sell, purchase, trade, or possess prescription drug samples, unless the pharmacy meets the requirements as specified in §291.16 of this title (relating to Samples).

(iv) All drugs shall be stored at the proper temperatures, as defined in the USP/NF and in §291.15 of this title (relating to Storage of Drugs).

(v) Any drug bearing an expiration date may not be dispensed or distributed beyond the expiration date of the drug.

(vi) Outdated drugs shall be removed from dispensing stock and shall be quarantined together until such drugs are disposed of.

(B) Formulary.

(i) A formulary may be developed by an appropriate committee of the ASC.

(ii) The pharmacist-in-charge or consultant pharmacist shall be a full voting member of any committee which involves pharmaceutical services.

(iii) A practitioner may grant approval for pharmacists at the ASC to interchange, in accordance with the facility's formulary, for the drugs on the practitioner's medication orders provided:

(I) a formulary has been developed;

(II) the formulary has been approved by the medical staff of the ASC;

(III) there is a reasonable method for the practitioner to override any interchange; and

(IV) the practitioner authorizes pharmacist in the ASC to interchange on his/her medication orders in accordance with the facility's formulary through his/her written agreement to abide by the policies and procedures of the medical staff and facility.

(C) Prepackaging and loading drugs into automated medication supply system.

(i) Prepackaging of drugs.

(I) Drugs may be prepackaged in quantities suitable for distribution to other Class C pharmacies under common ownership or for internal distribution only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(II) The label of a prepackaged unit shall indicate:

(-a-) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(-b-) facility's lot number;

(-c-) expiration date;

(-d-) quantity of the drug, if quantity is greater than one; and

(-e-) if the drug is distributed to another Class C pharmacy, name of the facility responsible for prepackaging the drug.

(III) Records of prepackaging shall be maintained to show:

(-a-) the name of the drug, strength, and dosage form;

(-b-) facility's lot number;

(-c-) manufacturer or distributor;

(-d-) manufacturer's lot number;

(-e-) expiration date;

(-f-) quantity per prepackaged unit;

(-g-) number of prepackaged units;

(-h-) date packaged;

(-i-) name, initials, or electronic signature of the preparer;

(-j-) signature or electronic signature of the responsible pharmacist; and

(-k-) if the drug is distributed to another Class C pharmacy, name of the facility receiving the prepackaged drug.

(IV) Stock packages, repackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(ii) Loading bulk unit of use drugs into automated medication supply systems. Automated medication supply systems may be loaded with bulk unit of use drugs only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist. For the purpose of this clause, direct supervision may be accomplished by physically present supervision or electronic monitoring by a pharmacist. In order for the pharmacist to electronically monitor, the medication supply system must allow for bar code scanning to verify the loading of drugs, and a record of the loading must be maintained by the system and accessible for electronic review by the pharmacist.

(6) Medication orders.

(A) Drugs may be administered to patients in ASCs only on the order of a practitioner. No change in the order for drugs may be made without the approval of a practitioner except as authorized by the practitioner in compliance with paragraph (5)(B) of this subsection.

(B) Drugs may be distributed only pursuant to the practitioner's medication order.

(C) ASC pharmacies shall be exempt from the labeling provisions and patient notification requirements of §562.006 and §562.009 of the Act, as respects drugs distributed pursuant to medication orders.

(D) In ASCs with a full-time pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the facility when the pharmacy is closed, the following is applicable.

(i) Prescription drugs and devices only in sufficient quantities for immediate therapeutic needs of a patient may be removed from the ASC pharmacy.

(ii) Only a designated or practitioner may remove such drugs and devices.

(iii) A record shall be made at the time of withdrawal by the authorized person removing the drugs and devices. The record shall contain the following information:

- (I) name of the patient;
- (II) name of device or drug, strength, and dosage form;
- (III) dose prescribed;
- (IV) quantity taken;
- (V) time and date; and
- (VI) signature or electronic signature of person making withdrawal.

(iv) The medication order in the patient's chart may substitute for such record, provided the medication order meets all the requirements of clause (iii) of this subparagraph.

(v) The pharmacist shall verify the withdrawal as soon as practical, but in no event more than 72 hours from the time of such withdrawal.

(E) In ASCs with a part-time or consultant pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the ASC when the pharmacist is not on duty, or when the pharmacy is closed, the following is applicable.

(i) Prescription drugs and devices only in sufficient quantities for therapeutic needs may be removed from the ASC pharmacy.

(ii) Only a designated or practitioner may remove such drugs and devices.

(iii) A record shall be made at the time of withdrawal by the authorized person removing the drugs and devices; the record shall meet the same requirements as specified in subparagraph (D) of this paragraph.

(iv) The pharmacist shall conduct an audit of patient's medical record according to the schedule set out in the policy and procedures at a reasonable interval, but such interval must occur at least once in every calendar week that the pharmacy is open.

(7) Floor stock. In facilities using a floor stock method of drug distribution, the following is applicable for removing drugs or devices in the absence of a pharmacist.

(A) Prescription drugs and devices may be removed from the pharmacy only in the original manufacturer's container or prepackaged container.

(B) Only a designated or practitioner may remove such drugs and devices.

(C) A record shall be made at the time of withdrawal by the authorized person removing the drug or device; the record shall contain the following information:

- (i) name of the drug, strength, and dosage form;
- (ii) quantity removed;
- (iii) location of floor stock;
- (iv) date and time; and
- (v) signature or electronic signature of person making the withdrawal.

(D) A pharmacist shall verify the withdrawal according to the following schedule.

(i) In facilities with a full-time pharmacist, the withdrawal shall be verified as soon as practical, but in no event more than 72 hours from the time of such withdrawal.

(ii) In facilities with a part-time or consultant pharmacist, the withdrawal shall be verified after a reasonable interval, but such interval must occur at least once in every calendar week that the pharmacy is open.

(iii) The medication order in the patient's chart may substitute for the record required in subparagraph (C) of this paragraph, provided the medication order meets all the requirements of subparagraph (C) of this paragraph.

(8) Policies and procedures. Written policies and procedures for a drug distribution system, appropriate for the ambulatory surgical center, shall be developed and implemented by the pharmacist-in-charge with the advice of the appropriate committee. The written policies and procedures for the drug distribution system shall include, but not be limited to, procedures regarding the following:

- (A) controlled substances;
- (B) investigational drugs;
- (C) prepackaging and manufacturing;
- (D) medication errors;

- (E) orders of physician or other practitioner;
- (F) floor stocks;
- (G) adverse drug reactions;
- (H) drugs brought into the facility by the patient;
- (I) self-administration;
- (J) emergency drug tray;
- (K) formulary, if applicable;
- (L) drug storage areas;
- (M) drug samples;
- (N) drug product defect reports;
- (O) drug recalls;
- (P) outdated drugs;
- (Q) preparation and distribution of IV admixtures;
- (R) procedures for supplying drugs for postoperative use, if applicable;
- (S) use of automated medication supply systems;
- (T) use of data processing systems; and
- (U) drug regimen review.

(9) Drugs supplied for postoperative use. Drugs supplied to patients for postoperative use shall be supplied according to the following procedures.

(A) Drugs may only be supplied to patients who have been admitted to the ASC.

(B) Drugs may only be supplied in accordance with the system of control and accountability established for drugs supplied from the ambulatory surgical center; such system shall be developed and supervised by the pharmacist-in-charge or staff pharmacist designated by the pharmacist-in-charge.

(C) Only drugs listed on the approved postoperative drug list may be supplied; such list shall be developed by the pharmacist-in-charge and the medical staff and shall consist of drugs of the nature and type to meet the immediate postoperative needs of the ambulatory surgical center patient.

(D) Drugs may only be supplied in prepackaged quantities not to exceed a 72-hour supply in suitable containers and appropriately pre-labeled (including name, address, and phone number of the facility, and necessary auxiliary labels) by the pharmacy, provided, however that topicals and ophthalmics in original manufacturer's containers may be supplied in a quantity exceeding a 72-hour supply.

(E) At the time of delivery of the drug, the practitioner shall complete the label, such that the prescription container bears a label with at least the following information:

- (i) date supplied;
- (ii) name of practitioner;
- (iii) name of patient;
- (iv) directions for use;

(v) brand name and strength of the drug; or if no brand name, then the generic name of the drug dispensed, strength, and the name of the manufacturer or distributor of the drug; and

- (vi) unique identification number.

(F) After the drug has been labeled, the practitioner or a licensed nurse under the supervision of the practitioner shall give the appropriately labeled, prepackaged medication to the patient.

(G) A perpetual record of drugs which are supplied from the ASC shall be maintained which includes:

- (i) name, address, and phone number of the facility;
- (ii) date supplied;
- (iii) name of practitioner;
- (iv) name of patient;
- (v) directions for use;
- (vi) brand name and strength of the drug; or if no brand name, then the generic name of the drug dispensed, strength, and the name of the manufacturer or distributor of the drug; and
- (vii) unique identification number.

(H) The pharmacist-in-charge, or a pharmacist designated by the pharmacist-in-charge, shall review the records at least once in every calendar week that the pharmacy is open.

(10) Drug regimen review.

(A) A pharmacist shall evaluate medication orders and patient medication records for:

- (i) known allergies;
- (ii) rational therapy--contraindications;
- (iii) reasonable dose and route of administration;
- (iv) reasonable directions for use;
- (v) duplication of therapy;
- (vi) drug-drug interactions;
- (vii) drug-food interactions;
- (viii) drug-disease interactions;
- (ix) adverse drug reactions;
- (x) proper utilization, including overutilization or underutilization; and

(xi) clinical laboratory or clinical monitoring methods to monitor and evaluate drug effectiveness, side effects, toxicity, or adverse effects, and appropriateness to continued use of the drug in its current regimen.

(B) A retrospective, random drug regimen review as specified in the pharmacy's policies and procedures shall be conducted on a periodic basis to verify proper usage of drugs not to exceed 31 days between such reviews.

(C) Any questions regarding the order must be resolved with the prescriber and a written notation of these discussions made and maintained.

(e) (No change.)

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

Filed with the Office of the Secretary of State on June 13, 2016.
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Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: July 24, 2016
For further information, please call: (512) 305-8037



SUBCHAPTER F. NON-RESIDENT PHARMACY (CLASS E)

22 TAC §291.104

The Texas State Board of Pharmacy proposes amendments to §291.104, concerning Operational Standards. The amendments, if adopted, update the requirements for Class E pharmacies to submit prescription to the Texas State Board of Pharmacy instead of the Texas Department of Public Safety.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will ensure prescriptions for residents of Texas are properly submitted to the Texas Prescription Monitoring Program. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Written comments on the amendments may be submitted to Allison Vordenbaumen Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-6778. Comments must be received by 5 p.m., August 1, 2016.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.104. *Operational Standards.*

(a) Licensing requirements.

(1) A Class E pharmacy shall register with the board on a pharmacy license application provided by the board, following the procedures specified in §291.1 of this title (relating to Pharmacy License Application).

(2) On initial application, the pharmacy shall follow the procedures specified in §291.1 of this title (relating to Pharmacy License Application) and then provide the following additional information specified in §560.052(c) and (f) of the Act (relating to Qualifications):

(A) evidence that the applicant holds a pharmacy license, registration, or permit issued by the state in which the pharmacy is located;

(B) the name of the owner and pharmacist-in-charge of the pharmacy for service of process;

(C) evidence of the applicant's ability to provide to the board a record of a prescription drug order dispensed by the applicant to a resident of this state not later than 72 hours after the time the board requests the record;

(D) an affidavit by the pharmacist-in-charge which states that the pharmacist has read and understands the laws and rules relating to a Class E pharmacy;

(E) proof of creditworthiness; and

(F) an inspection report issued not more than two years before the date the license application is received and conducted by the pharmacy licensing board in the state of the pharmacy's physical location.

(i) A Class E pharmacy may submit an inspection report issued by an entity other than the pharmacy licensing board of the state in which the pharmacy is physically located if the state's licensing board does not conduct inspections as follows:

(I) an individual approved by the board who is not employed by the pharmacy but acting as a consultant to inspect the pharmacy;

(II) an agent of the National Association of Boards of Pharmacy;

(III) an agent of another State Board of Pharmacy; or

(IV) an agent of an accrediting body, such as the Joint Commission on Accreditation of Healthcare Organizations.

(ii) The inspection must be substantively equivalent to an inspection conducted by the board.

(3) On renewal of a license, the pharmacy shall complete the renewal application provided by the board and, as specified in §561.0031 of the Act, provide an inspection report issued not more than three years before the date the renewal application is received and conducted by the pharmacy licensing board in the state of the pharmacy's physical location.

(A) A Class E pharmacy may submit an inspection report issued by an entity other than the pharmacy licensing board of the state in which the pharmacy is physically located if the state's licensing board does not conduct inspections as follows:

(i) an individual approved by the board who is not employed by the pharmacy but acting as a consultant to inspect the pharmacy;

(ii) an agent of the National Association of Boards of Pharmacy;

(iii) an agent of another State Board of Pharmacy; or

(iv) an agent of an accrediting body, such as the Joint Commission on Accreditation of Healthcare Organizations.

(B) The inspection must be substantively equivalent to an inspection conducted by the board.

(4) A Class E pharmacy which changes ownership shall notify the board within ten days of the change of ownership and apply for a new and separate license as specified in §291.3 of this title (relating to Required Notifications).

(5) A Class E pharmacy which changes location and/or name shall notify the board [~~within ten days~~] of the change [~~and file for an amended license~~] as specified in §291.3 of this title.

(6) A Class E pharmacy owned by a partnership or corporation which changes managing officers shall notify the board in writing of the names of the new managing officers within ten days of the change, following the procedures in §291.3 of this title.

(7) A Class E pharmacy shall notify the board in writing within ten days of closing.

(8) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(9) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance and renewal of a license and the issuance of an amended license.

(10) The board may grant an exemption from the licensing requirements of this Act on the application of a pharmacy located in a state of the United States other than this state that restricts its dispensing of prescription drugs or devices to residents of this state to isolated transactions.

(11) A Class E pharmacy engaged in the centralized dispensing of prescription drug or medication orders shall comply with the provisions of §291.125 of this title (relating to Centralized Prescription Dispensing).

(12) A Class E pharmacy engaged in central processing of prescription drug or medication orders shall comply with the provisions of §291.123 of this title (relating to Central Prescription or Medication Order Processing).

(13) A Class E pharmacy engaged in the compounding of non-sterile preparations shall comply with the provisions of §291.131 of this title (relating to Pharmacies Compounding Non-Sterile Preparations).

(14) Class E pharmacy personnel shall not compound sterile preparations unless the pharmacy has applied for and obtained a Class E-S pharmacy.

(15) A Class E pharmacy, which operates as a community type of pharmacy which would otherwise be required to be licensed under the Act §560.051(a)(1) (Community Pharmacy (Class A)), shall comply with the provisions of §291.31 of this title (relating to Definitions), §291.32 of this title (relating to Personnel), §291.33 of this title (relating to Operational Standards), §291.34 of this title (relating to Records), and §291.35 of this title (relating to Official Prescription Records), contained in Community Pharmacy (Class A); or which operates as a nuclear type of pharmacy which would otherwise be required to be licensed under the Act §560.051(a)(2) (Nuclear Pharmacy (Class B)), shall comply with the provisions of §291.51 of this title (relating to Purpose), §291.52 of this title (relating to Definitions), §291.53 of this title (relating to Personnel), §291.54 of this title (relating to Operational Standards), and §291.55 of this title (relating to Records), contained in Nuclear Pharmacy (Class B), to the extent such sections are applicable to the operation of the pharmacy.

(b) Prescription dispensing and delivery.

(1) General.

(A) All prescription drugs and/or devices shall be dispensed and delivered safely and accurately as prescribed.

(B) The pharmacy shall maintain adequate storage or shipment containers and use shipping processes to ensure drug stability and potency. Such shipping processes shall include the use of packaging material and devices to ensure that the drug is maintained at an appropriate temperature range to maintain the integrity of the medication throughout the delivery process.

(C) The pharmacy shall utilize a delivery system which is designed to assure that the drugs are delivered to the appropriate patient.

(D) All pharmacists shall exercise sound professional judgment with respect to the accuracy and authenticity of any prescription drug order they dispense. If the pharmacist questions the accuracy or authenticity of a prescription drug order, he/she shall verify the order with the practitioner prior to dispensing.

(E) Prior to dispensing a prescription, pharmacists shall determine, in the exercise of sound professional judgment, that the prescription is a valid prescription. A pharmacist may not dispense a prescription drug if the pharmacist knows or should have known that the prescription was issued on the basis of an Internet-based or telephonic consultation without a valid patient-practitioner relationship.

(F) Subparagraph (E) of this paragraph does not prohibit a pharmacist from dispensing a prescription when a valid patient-practitioner relationship is not present in an emergency situation (e.g. a practitioner taking calls for the patient's regular practitioner).

(2) Drug regimen review.

(A) For the purpose of promoting therapeutic appropriateness, a pharmacist shall prior to or at the time of dispensing a prescription drug order, review the patient's medication record. Such review shall at a minimum identify clinically significant:

- (i) inappropriate drug utilization;
- (ii) therapeutic duplication;
- (iii) drug-disease contraindications;
- (iv) drug-drug interactions;
- (v) incorrect drug dosage or duration of drug treatment;
- (vi) drug-allergy interactions; and
- (vii) clinical abuse/misuse.

(B) Upon identifying any clinically significant conditions, situations, or items listed in subparagraph (A) of this paragraph, the pharmacist shall take appropriate steps to avoid or resolve the problem including consultation with the prescribing practitioner. The pharmacist shall document such occurrences.

(3) Patient counseling and provision of drug information.

(A) To optimize drug therapy, a pharmacist shall communicate to the patient or the patient's agent, information about the prescription drug or device which in the exercise of the pharmacist's professional judgment the pharmacist deems significant, such as the following:

- (i) the name and description of the drug or device;
- (ii) dosage form, dosage, route of administration, and duration of drug therapy;
- (iii) special directions and precautions for preparation, administration, and use by the patient;
- (iv) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;
- (v) techniques for self-monitoring of drug therapy;
- (vi) proper storage;
- (vii) refill information; and

(viii) action to be taken in the event of a missed dose.

(B) Such communication shall be:

(i) provided to new and existing patients of a pharmacy with each new prescription drug order. A new prescription drug order is one that has not been dispensed by the pharmacy to the patient in the same dosage and strength within the last year;

(ii) provided for any prescription drug order dispensed by the pharmacy on the request of the patient or patient's agent;

(iii) communicated orally in person unless the patient or patient's agent is not at the pharmacy or a specific communication barrier prohibits such oral communication; and

(iv) reinforced with written information. The following is applicable concerning this written information:

(I) Written information must be in plain language designed for the patient and printed in an easily readable font comparable to but no smaller than ten-point Times Roman. This information may be provided to the patient in an electronic format, such as by e-mail, if the patient or patient's agent requests the information in an electronic format and the pharmacy documents the request.

(II) When a compounded product is dispensed, information shall be provided for the major active ingredient(s), if available.

(III) For new drug entities, if no written information is initially available, the pharmacist is not required to provide information until such information is available, provided:

(-a-) the pharmacist informs the patient or the patient's agent that the product is a new drug entity and written information is not available;

(-b-) the pharmacist documents the fact that no written information was provided; and

(-c-) if the prescription is refilled after written information is available, such information is provided to the patient or patient's agent.

(IV) The written information accompanying the prescription or the prescription label shall contain the statement "Do not flush unused medications or pour down a sink or drain." A drug product on a list developed by the Federal Food and Drug Administration of medicines recommended for disposal by flushing is not required to bear this statement.

(C) Only a pharmacist may orally provide drug information to a patient or patient's agent and answer questions concerning prescription drugs. Non-pharmacist personnel may not ask questions of a patient or patient's agent which are intended to screen and/or limit interaction with the pharmacist.

(D) If prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacy shall provide a toll-free telephone line which is answered during normal business hours to enable communication between the patient and a pharmacist.

(E) The pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container in both English and Spanish the local and toll-free telephone number of the pharmacy and the statement: "Written information about this prescription has been provided for you. Please read this information before you take the medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions at (insert the pharmacy's local and toll-free telephone numbers)."

(F) The provisions of this paragraph do not apply to patients in facilities where drugs are administered to patients by a person required to do so by the laws of the state (i.e., nursing homes).

(G) Upon delivery of a refill prescription, a pharmacist shall ensure that the patient or patient's agent is offered information about the refilled prescription and that a pharmacist is available to discuss the patient's prescription and provide information.

(H) Nothing in this subparagraph shall be construed as requiring a pharmacist to provide consultation when a patient or patient's agent refuses such consultation. The pharmacist shall document such refusal for consultation.

(4) Labeling. At the time of delivery, the dispensing container shall bear a label that contains the following information:

(A) the name, physical address, and phone number of the pharmacy;

(B) if the drug is dispensed in a container other than the manufacturer's original container, the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacturer, the beyond-use-date shall be one year from the date the drug is dispensed or the manufacturer's expiration date, whichever is earlier. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication;

(C) either on the prescription label or the written information accompanying the prescription, the statement, "Do not flush unused medications or pour down a sink or drain." A drug product on a list developed by the Federal Food and Drug Administration of medicines recommended for disposal by flushing is not required to bear this statement; and

(D) any other information that is required by the pharmacy or drug laws or rules in the state in which the pharmacy is located.

(c) Substitution requirements.

(1) Unless compliance would violate the pharmacy or drug laws or rules in the state in which the pharmacy is located a pharmacist in a Class E pharmacy may dispense a generically equivalent drug or interchangeable biological product and shall comply with the provisions of §309.3 of this title (relating to Substitution Requirements) and §309.7 of this title (relating to Dispensing Responsibilities).

(2) The pharmacy must include on the prescription order form completed by the patient or the patient's agent information that clearly and conspicuously:

(A) states that if a less expensive generically equivalent drug or interchangeable biological product is available for the brand prescribed, the patient or the patient's agent may choose between the generically equivalent drug or interchangeable biological product and the brand prescribed; and

(B) allows the patient or the patient's agent to indicate the choice of the generically equivalent drug or interchangeable biological product or the brand prescribed.

(d) Therapeutic Drug Interchange. A switch to a drug providing a similar therapeutic response to the one prescribed shall not be made without prior approval of the prescribing practitioner. This subsection does not apply to generic substitution. For generic substitution, see the requirements of subsection (c) of this section.

(1) The patient shall be notified of the therapeutic drug interchange prior to, or upon delivery, of the dispensed prescription to the patient. Such notification shall include:

- (A) a description of the change;
- (B) the reason for the change;
- (C) whom to notify with questions concerning the change; and
- (D) instructions for return of the drug if not wanted by the patient.

(2) The pharmacy shall maintain documentation of patient notification of therapeutic drug interchange which shall include:

- (A) the date of the notification;
- (B) the method of notification;
- (C) a description of the change; and
- (D) the reason for the change.

(e) Transfer of Prescription Drug Order Information. Unless compliance would violate the pharmacy or drug laws or rules in the state in which the pharmacy is located, a pharmacist in a Class E pharmacy may not refuse to transfer prescriptions to another pharmacy that is making the transfer request on behalf of the patient. The transfer of original prescription information must be done within four business hours of the request.

(f) Prescriptions for Schedule II - V controlled substances. Unless compliance would violate the pharmacy or drug laws or rules in the state in which the pharmacy is located, a pharmacist in a Class E pharmacy who dispenses a prescription for a Schedule II - V controlled substance for a resident of Texas [issued by a prescriber registered with the Texas Department of Public Safety] shall:

~~[(1) mail a copy of the prescription to the Texas Department of Public Safety, Texas Prescription Program, P.O. Box 4087, Austin, Texas 78773 within 7 days of dispensing; or]~~

~~[(2) electronically send the prescription information to the Texas State Board of Pharmacy as specified in §315.6 of this title (relating to Pharmacy Responsibility - Electronic Reporting - Effective September 1, 2016.) [Texas Department of Public Safety per their requirements for electronic submissions] within 7 days of dispensing.~~

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 June 13, 2016.

TRD-201602966

Gay Dodson, R.Ph.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: July 24, 2016

For further information, please call: (512) 305-8037



SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

22 TAC §291.133

The Texas State Board of Pharmacy proposes amendments to §291.133 concerning Pharmacies Compounding Sterile Prepara-

tions. The amendments, if adopted, update the rules with regard to USP <797>.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will ensure pharmacies engaged in sterile compounding are doing so in accordance with USP <797>. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Written comments on the amendments may be submitted to Allison Vordenbaumen Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-6778. Comments must be received by 5:00 p.m., August 1, 2016.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.133. *Pharmacies Compounding Sterile Preparations.*

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

(c) Personnel.

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

(4) Evaluation and testing requirements.

(A) All pharmacy personnel preparing sterile preparations shall be trained conscientiously and skillfully by expert personnel through multimedia instructional sources and professional publications in the theoretical principles and practical skills of aseptic manipulations, garbing procedures, aseptic work practices, achieving and maintaining ISO Class 5 environmental conditions, and cleaning and disinfection procedures before beginning to prepare compounded sterile preparations.

(B) All pharmacy personnel preparing sterile preparations shall perform didactic review and pass written and media-fill testing of aseptic manipulative skills initially followed by:

(i) every 12 months for low- and medium-risk level compounding; and

(ii) every six months for high-risk level compounding.

(C) Pharmacy personnel who fail written tests or whose media-fill test vials result in gross microbial colonization shall:

(i) be immediately re-instructed and re-evaluated by expert compounding personnel to ensure correction of all aseptic practice deficiencies; and

(ii) not be allowed to compound sterile preparations for patient use until passing results are achieved.

(D) The didactic and experiential training shall include instruction, experience, and demonstrated proficiency in the following areas:

- (i) aseptic technique;
- (ii) critical area contamination factors;
- (iii) environmental monitoring;
- (iv) structure and engineering controls related to facilities;
- (v) equipment and supplies;
- (vi) sterile preparation calculations and terminology;
- (vii) sterile preparation compounding documentation;
- (viii) quality assurance procedures;
- (ix) aseptic preparation procedures including proper gowning and gloving technique;
- (x) handling of hazardous drugs, if applicable;
- (xi) cleaning procedures; and
- (xii) general conduct in the clean room.

(E) The aseptic technique of each person compounding or responsible for the direct supervision of personnel compounding sterile preparations shall be observed and evaluated by expert personnel as satisfactory through written and practical tests, and challenge testing, and such evaluation documented. Compounding personnel shall not evaluate their own aseptic technique or results of their own media-fill challenge testing.

(F) Media-fill tests must be conducted at each pharmacy where an individual compounds low or medium risk sterile preparations. If pharmacies are under common ownership and control, the media-fill testing may be conducted at only one of the pharmacies provided each of the pharmacies are operated under equivalent policies and procedures and the testing is conducted under the most challenging or stressful conditions. In addition, each pharmacy must maintain documentation of the media-fill test. No preparation intended for patient use shall be compounded by an individual until the on-site media-fill tests indicate that the individual can competently perform aseptic procedures, except that a pharmacist may temporarily compound sterile preparations and supervise pharmacy technicians compounding sterile preparations without media-fill tests provided the pharmacist completes the on-site media-fill tests within seven days of commencing work at the pharmacy.

(G) Media-fill must be conducted at each pharmacy where an individual compounds high risk sterile preparations. No preparation intended for patient use shall be compounded by an individual until the on-site media-fill tests indicate that the individual can competently perform aseptic procedures, except that a pharmacist may temporarily compound sterile preparations and supervise pharmacy technicians compounding sterile preparations without media-fill tests provided the pharmacist completes the on-site media-fill tests within seven days of commencing work at the pharmacy.

(H) [(G)] Media-fill tests procedures for assessing the preparation of specific types of sterile preparations shall be representative of the most challenging or stressful conditions encountered by the pharmacy personnel being evaluated and, if applicable, for sterilizing high-risk level compounded sterile preparations.

(I) [(H)] Media-fill challenge tests simulating high-risk level compounding shall be used to verify the capability of the compounding environment and process to produce a sterile preparation.

(J) [(H)] Commercially available sterile fluid culture media, such as Soybean-Casein Digest Medium shall be able to promote exponential colonization of bacteria that are most likely to be transmitted to compounding sterile preparations from the compounding personnel and environment. Media-filled vials are generally incubated at 20 to 25 degrees Celsius or at 30 to 35 degrees Celsius for a minimum of 14 days. If two temperatures are used for incubation of media-filled samples, then these filled containers should be incubated for at least 7 days at each temperature. Failure is indicated by visible turbidity in the medium on or before 14 days.

(K) [(F)] The pharmacist-in-charge shall ensure continuing competency of pharmacy personnel through in-service education, training, and media-fill tests to supplement initial training. Personnel competency shall be evaluated:

- (i) during orientation and training prior to the regular performance of those tasks;
- (ii) whenever the quality assurance program yields an unacceptable result;
- (iii) whenever unacceptable techniques are observed; and
- (iv) at least on an annual basis for low- and medium-risk level compounding, and every six months for high-risk level compounding.

(L) [(K)] The pharmacist-in-charge shall ensure that proper hand hygiene and garbing practices of compounding personnel are evaluated prior to compounding, supervising, or verifying sterile preparations intended for patient use and whenever an aseptic media fill is performed.

- (i) Sampling of compounding personnel glove fingertips shall be performed for all risk level compounding.
- (ii) All compounding personnel shall demonstrate competency in proper hand hygiene and garbing procedures and in aseptic work practices (e.g., disinfection of component surfaces, routine disinfection of gloved hands).
- (iii) Sterile contact agar plates shall be used to sample the gloved fingertips of compounding personnel after garbing in order to assess garbing competency and after completing the media-fill preparation (without applying sterile 70% IPA).
- (iv) The visual observation shall be documented and maintained to provide a permanent record and long-term assessment of personnel competency.

(v) All compounding personnel shall successfully complete an initial competency evaluation and gloved fingertip/thumb sampling procedure no less than three times before initially being allowed to compound sterile preparations for patient use. Immediately after the compounding personnel completes the hand hygiene and garbing procedure (i.e., after donning of sterile gloves and before any disinfecting with sterile 70% IPA), the evaluator will collect a gloved fingertip and thumb sample from both hands of the compounding personnel onto agar plates or media test paddles by having the individual lightly touching each fingertip onto the agar. The test plates or test paddles will be incubated for the appropriate incubation period and at the appropriate temperature. Results of the initial gloved fingertip evaluations shall indicate zero colony-forming units (0 CFU) growth on the agar plates or media test paddles, or the test shall be

considered a failure. In the event of a failed gloved fingertip test, the evaluation shall be repeated until the individual can successfully don sterile gloves and pass the gloved fingertip evaluation, defined as zero CFUs growth. No preparation intended for patient use shall be compounded by an individual until the results of the initial gloved fingertip evaluation indicate that the individual can competently perform aseptic procedures except that a pharmacist may temporarily supervise pharmacy technicians compounding sterile preparations while waiting for the results of the evaluation for no more than three days.

(vi) Re-evaluation of all compounding personnel shall occur at least annually for compounding personnel who compound low and medium risk level preparations and every six months for compounding personnel who compound high risk level preparations. Results of gloved fingertip tests conducted immediately after compounding personnel complete a compounding procedure shall indicate no more than 3 CFUs growth, or the test shall be considered a failure, in which case, the evaluation shall be repeated until an acceptable test can be achieved (i.e., the results indicated no more than 3 CFUs growth).

(M) ~~(L)~~ The pharmacist-in-charge shall ensure surface sampling shall be conducted in all ISO classified areas on a periodic basis. Sampling shall be accomplished using contact plates at the conclusion of compounding. The sample area shall be gently touched with the agar surface by rolling the plate across the surface to be sampled.

(5) (No change.)

(d) Operational Standards.

(1) - (6) (No change.)

(7) Primary engineering control device. The pharmacy shall prepare sterile preparations in a primary engineering control device (PEC), such as a laminar air flow hood, biological safety cabinet, compounding aseptic isolator (CAI), or compounding aseptic containment isolator (CACI) which is capable of maintaining at least ISO Class 5 conditions for 0.5 micrometer particles while compounding sterile preparations.

(A) Laminar air flow hood. If the pharmacy is using a laminar air flow hood as its PEC, the laminar air flow hood shall:

(i) be located in the buffer area and placed in the buffer area in a manner as to avoid conditions that could adversely affect its operation such as strong air currents from opened doors, personnel traffic, or air streams from the heating, ventilating and air condition system;

(ii) be certified by a qualified independent contractor according to the appropriate Controlled Environment Testing Association (CETA) standard (CAG-003-2006) for operational efficiency at least every six months and whenever the device or room is relocated or altered or major service to the facility is performed;

(iii) have pre-filters inspected periodically and replaced as needed, in accordance with written policies and procedures and the manufacturer's specification, and the inspection and/or replacement date documented; and

(iv) be located in a buffer area that has a minimum differential positive pressure of 0.02 to 0.05 inches water column. A buffer area that is not physically separated from the ante-area shall employ the principle of displacement airflow as defined in Chapter 797, Pharmaceutical Compounding--Sterile Preparations, of the USP/NF, with limited access to personnel.

(B) Biological safety cabinet.

(i) If the pharmacy is using a biological safety cabinet as its PEC for the preparation of hazardous sterile compounded preparations, the biological safety cabinet shall be a Class II or III vertical flow biological safety cabinet located in an ISO Class 7 area that is physically separated from other preparation areas. The area for preparation of sterile chemotherapeutic preparations shall:

(I) have not less than 0.01 inches water column negative pressure to the adjacent positive pressure ISO Class 7 or better ante-area; and

(II) have a pressure indicator that can be readily monitored for correct room pressurization.

(ii) Pharmacies that prepare a low volume of hazardous drugs, are not required to comply with the provisions of clause (i) of this subparagraph if the pharmacy uses a device that provides two tiers of containment (e.g., closed-system vial transfer device within a BSC [or CACI that is located in a non-negative pressure room]).

(iii) If the pharmacy is using a biological safety cabinet as its PEC for the preparation of non-hazardous sterile compounded preparations, the biological safety cabinet shall:

(I) be located in the buffer area and placed in the buffer area in a manner as to avoid conditions that could adversely affect its operation such as strong air currents from opened doors, personnel traffic, or air streams from the heating, ventilating and air condition system;

(II) be certified by a qualified independent contractor according to the International Organization of Standardization (ISO) Classification of Particulate Matter in Room Air (ISO 14644-1) for operational efficiency at least every six months and whenever the device or room is relocated or altered or major service to the facility is performed, in accordance with the manufacturer's specifications and test procedures specified in the Institute of Environmental Sciences and Technology (IEST) document IEST-RP-CC002.3;

(III) have pre-filters inspected periodically and replaced as needed, in accordance with written policies and procedures and the manufacturer's specification, and the inspection and/or replacement date documented; and

(IV) be located in a buffer area that has a minimum differential positive pressure of 0.02 to 0.05 inches water column.

(C) Compounding aseptic isolator.

(i) If the pharmacy is using a compounding aseptic isolator (CAI) as its PEC, the CAI shall provide unidirectional airflow within the main processing and antechambers, and be placed in an ISO Class 7 buffer area unless the isolator meets all of the following conditions:

(I) The isolator must provide isolation from the room and maintain ISO Class 5 during dynamic operating conditions including transferring ingredients, components, and devices into and out of the isolator and during preparation of compounded sterile preparations.

(II) Particle counts sampled approximately 6 to 12 inches upstream of the critical exposure site must maintain ISO Class 5 levels during compounding operations.

(III) The CAI must be validated according to CETA CAG-002-2006 standards.

(IV) The pharmacy shall maintain documentation from the manufacturer that the isolator meets this standard when located in worse than ISO Class 7 environments.

(ii) If the isolator meets the requirements in clause (i) of this subparagraph, the CAI may be placed in a non-ISO classified area of the pharmacy; however, the area shall be segregated from other areas of the pharmacy and shall:

(I) be clean, well lit, and of sufficient size;

(II) be used only for the compounding of low- and medium-risk, non-hazardous sterile preparations;

(III) be located in an area of the pharmacy with non-porous and washable floors or floor covering to enable regular disinfection; and

(IV) be an area in which the CAI is placed in a manner as to avoid conditions that could adversely affect its operation.

(iii) In addition to the requirements specified in clauses (i) and (ii) of this subparagraph, if the CAI is used in the compounding of high-risk non-hazardous preparations, the CAI shall be placed in an area or room with at least ISO 8 quality air so that high-risk powders weighed in at least ISO-8 air quality conditions, compounding utensils for measuring and other compounding equipment are not exposed to lesser air quality prior to the completion of compounding and packaging of the high-risk preparation.

(D) Compounding aseptic containment isolator.

(i) If the pharmacy is using a compounding aseptic containment isolator as its PEC for the preparation of low- and medium-risk hazardous drugs, the CACI shall be located in a separate room away from other areas of the pharmacy and shall:

(I) provide at least 0.01 inches water column negative pressure compared to the other areas of the pharmacy;

(II) provide unidirectional airflow within the main processing and antechambers, and be placed in an ISO Class 7 buffer area, unless the CACI meets all of the following conditions.

(-a-) The isolator must provide isolation from the room and maintain ISO Class 5 during dynamic operating conditions including transferring ingredients, components, and devices into and out of the isolator and during preparation of compounded sterile preparations.

(-b-) Particle counts sampled approximately 6 to 12 inches upstream of the critical exposure site must maintain ISO Class 5 levels during compounding operations.

(-c-) The CACI must be validated according to CETA CAG-002-2006 standards.

(-d-) The pharmacy shall maintain documentation from the manufacturer that the isolator meets this standard when located in worse than ISO Class 7 environments.

(ii) If the CACI meets all conditions specified in clause (i) of this subparagraph, the CACI shall not be located in the same room as a CAI, but shall be located in a separate room in the pharmacy, that is not required to maintain ISO classified air. The room in which the CACI is located shall provide a minimum of 0.01 inches water column negative pressure compared with the other areas of the pharmacy and shall meet the following requirements:

(I) be clean, well lit, and of sufficient size;

(II) be maintained at a temperature of 20 degrees Celsius or cooler and a humidity below 60%;

(III) be used only for the compounding of hazardous sterile preparations;

(IV) be located in an area of the pharmacy with walls, ceilings, floors, fixtures, shelving, counters, and cabinets that are

smooth, impervious, free from cracks and crevices, non-shedding and resistant to damage by disinfectant agents; and

(V) have non-porous and washable floors or floor covering to enable regular disinfection.

(iii) If the CACI is used in the compounding of high-risk hazardous preparations, the CACI shall be placed in an area or room with at least ISO 8 quality air so that high-risk powders, weighed in at least ISO-8 air quality conditions, are not exposed to lesser air quality prior to the completion of compounding and packaging of the high-risk preparation.

(iv) Pharmacies that prepare a low volume of hazardous drugs, are not required to comply with the provisions of clauses (i) and (iii) of this subparagraph if the pharmacy uses a device that provides two tiers of containment (e.g., CACI that is located in a non-negative pressure room).

(8) - (13) (No change.)

(14) Quality Assurance.

(A) Initial Formula Validation. Prior to routine compounding of a sterile preparation, a pharmacy shall conduct an evaluation that shows that the pharmacy is capable of compounding a preparation that is sterile and that contains the stated amount of active ingredient(s).

(i) Low risk preparations.

(I) Quality assurance practices include, but are not limited to the following:

(-a-) Routine disinfection and air quality testing of the direct compounding environment to minimize microbial surface contamination and maintain ISO Class 5 air quality.

(-b-) Visual confirmation that compounding personnel are properly donning and wearing appropriate items and types of protective garments and goggles.

(-c-) Review of all orders and packages of ingredients to ensure that the correct identity and amounts of ingredients were compounded.

(-d-) Visual inspection of compounded sterile preparations, except for sterile radiopharmaceuticals, to ensure the absence of particulate matter in solutions, the absence of leakage from vials and bags, and the accuracy and thoroughness of labeling.

(II) Example of a Media-Fill Test Procedure. This, or an equivalent test, is performed at least annually by each person authorized to compound in a low-risk level under conditions that closely simulate the most challenging or stressful conditions encountered during compounding of low-risk level sterile preparations. Once begun, this test is completed without interruption within an ISO Class 5 air quality environment. Three sets of four 5-milliliter aliquots of sterile Soybean-Casein Digest Medium are transferred with the same sterile 10-milliliter syringe and vented needle combination into separate sealed, empty, sterile 30-milliliter clear vials (i.e., four 5-milliliter aliquots into each of three 30-milliliter vials). Sterile adhesive seals are aseptically affixed to the rubber closures on the three filled vials. The vials are incubated within a range of 20 - 35 degrees Celsius for a minimum of 14 days. Failure is indicated by visible turbidity in the medium on or before 14 days. The media-fill test must include a positive-control sample.

(ii) Medium risk preparations.

(I) Quality assurance procedures for medium-risk level compounded sterile preparations include all those for low-risk level compounded sterile preparations, as well as a more challenging media-fill test passed annually, or more frequently.

(II) Example of a Media-Fill Test Procedure.

This, or an equivalent test, is performed at least annually under conditions that closely simulate the most challenging or stressful conditions encountered during compounding. This test is completed without interruption within an ISO Class 5 air quality environment. Six 100-milliliter aliquots of sterile Soybean-Casein Digest Medium are aseptically transferred by gravity through separate tubing sets into separate evacuated sterile containers. The six containers are then arranged as three pairs, and a sterile 10-milliliter syringe and 18-gauge needle combination is used to exchange two 5-milliliter aliquots of medium from one container to the other container in the pair. For example, after a 5-milliliter aliquot from the first container is added to the second container in the pair, the second container is agitated for 10 seconds, then a 5-milliliter aliquot is removed and returned to the first container in the pair. The first container is then agitated for 10 seconds, and the next 5-milliliter aliquot is transferred from it back to the second container in the pair. Following the two 5-milliliter aliquot exchanges in each pair of containers, a 5-milliliter aliquot of medium from each container is aseptically injected into a sealed, empty, sterile 10-milliliter clear vial, using a sterile 10-milliliter syringe and vented needle. Sterile adhesive seals are aseptically affixed to the rubber closures on the three filled vials. The vials are incubated within a range of 20 - 35 degrees Celsius for a minimum of 14 days. Failure is indicated by visible turbidity in the medium on or before 14 days. The media-fill test must include a positive-control sample.

(iii) High risk preparations.

(I) Procedures for high-risk level compounded sterile preparations include all those for low-risk level compounded sterile preparations. In addition, a media-fill test that represents high-risk level compounding is performed twice a year by each person authorized to compound high-risk level compounded sterile preparations.

(II) Example of a Media-Fill Test Procedure

Compounded Sterile Preparations Sterilized by Filtration. This test, or an equivalent test, is performed under conditions that closely simulate the most challenging or stressful conditions encountered when compounding high-risk level compounded sterile preparations. Note: Sterility tests for autoclaved compounded sterile preparations are not required unless they are prepared in batches of more than 25 units. This test is completed without interruption in the following sequence:

(-a-) Dissolve 3 grams of non-sterile commercially available Soybean-Casein Digest Medium in 100 milliliters of non-bacteriostatic water to make a 3% non-sterile solution.

(-b-) Draw 25 milliliters of the medium into each of three 30-milliliter sterile syringes. Transfer 5 milliliters from each syringe into separate sterile 10-milliliter vials. These vials are the positive controls to generate exponential microbial growth, which is indicated by visible turbidity upon incubation.

(-c-) Under aseptic conditions and using aseptic techniques, affix a sterile 0.2-micron porosity filter unit and a 20-gauge needle to each syringe. Inject the next 10 milliliters from each syringe into three separate 10-milliliter sterile vials. Repeat the process for three more vials. Label all vials, affix sterile adhesive seals to the closure of the nine vials, and incubate them at 20 to 35 degrees Celsius for a minimum of 14 days. Inspect for microbial growth over 14 days as described in Chapter 797 Pharmaceutical Compounding--Sterile Preparations, of the USP/NF.

(III) Filter Integrity Testing.

Filters need to undergo testing to evaluate the integrity of filters used to sterilize high-risk preparations, such as Bubble Point Testing or comparable filter integrity testing. Such testing is not a replacement for sterility testing and shall not be interpreted as such. Such test shall be performed after

a sterilization procedure on all filters used to sterilize each high-risk preparation or batch preparation and the results documented. The results should be compared with the filter manufacturer's specification for the specific filter used. If a filter fails the integrity test, the preparation or batch must be sterilized again using new unused filters.

(B) Finished preparation release checks and tests.

(i) All high-risk level compounded sterile preparations that are prepared in groups of more than 25 identical individual single-dose packages (such as ampuls, bags, syringes, and vials), or in multiple dose vials for administration to multiple patients, or are exposed longer than 12 hours at 2 - 8 degrees Celsius and longer than six hours at warmer than 8 degrees Celsius before they are sterilized shall be tested to ensure they are sterile and do not contain excessive bacterial endotoxins as specified in Chapter 71, Sterility Tests of the USP/NF before being dispensed or administered.

(ii) All compounded sterile preparations, except for sterile radiopharmaceuticals, that are intended to be solutions must be visually examined for the presence of particulate matter and not administered or dispensed when such matter is observed.

(iii) The prescription drug and medication orders, written compounding procedure, preparation records, and expended materials used to make compounded sterile preparations at all contamination risk levels shall be inspected for accuracy of correct identities and amounts of ingredients, aseptic mixing and sterilization, packaging, labeling, and expected physical appearance before they are dispensed or administered.

(iv) Written procedures for checking compounding accuracy shall be followed for every compounded sterile preparation during preparation, in accordance with pharmacy's policies and procedures, and immediately prior to release, including label accuracy and the accuracy of the addition of all drug products or ingredients used to prepare the finished preparation and their volumes or quantities. A pharmacist shall ensure that components used in compounding are accurately weighed, measured, or subdivided as appropriate to conform to the formula being prepared.

(C) Environmental Testing.

(i) Viable and nonviable environmental sampling testing. Environmental sampling shall occur, at a minimum, every six months as part of a comprehensive quality management program and under any of the following conditions:

(I) as part of the commissioning and certification of new facilities and equipment;

(II) following any servicing of facilities and equipment;

(III) as part of the re-certification of facilities and equipment;

(IV) in response to identified problems with end products or staff technique; or

(V) in response to issues with compounded sterile preparations, observed compounding personnel work practices, or patient-related infections (where the compounded sterile preparation is being considered as a potential source of the infection).

(ii) Total particle counts. Certification that each ISO classified area (e.g., ISO Class 5, 7, and 8), is within established guidelines shall be performed no less than every six months and whenever the equipment is relocated or the physical structure of the buffer area or ante-area has been altered. All certification records shall be maintained and reviewed to ensure that the controlled environments com-

ply with the proper air cleanliness, room pressures, and air changes per hour. Testing shall be performed by qualified operators using current, state-of-the-art equipment, with results of the following:

(I) ISO Class 5 - not more than 3520 particles 0.5 micrometer and larger size per cubic meter of air;

(II) ISO Class 7 - not more than 352,000 particles of 0.5 micrometer and larger size per cubic meter of air for any buffer area; and

(III) ISO Class 8 - not more than 3,520,000 particles of 0.5 micrometer and larger size per cubic meter of air for any ante-area.

(iii) Pressure differential monitoring. A pressure gauge or velocity meter shall be installed to monitor the pressure differential or airflow between the buffer area and the ante-area and between the ante-area and the general environment outside the compounding area. The results shall be reviewed and documented on a log at least every work shift (minimum frequency shall be at least daily) or by a continuous recording device. The pressure between the ISO Class 7 or ISO Class 8 and the general pharmacy area shall not be less than 0.02 inch water column.

(iv) Sampling plan. An appropriate environmental sampling plan shall be developed for airborne viable particles based on a risk assessment of compounding activities performed. Selected sampling sites shall include locations within each ISO Class 5 environment and in the ISO Class 7 and 8 areas and in the segregated compounding areas at greatest risk of contamination. The plan shall include sample location, method of collection, frequency of sampling, volume of air sampled, and time of day as related to activity in the compounding area and action levels.

(v) Viable air sampling. Evaluation of airborne microorganisms using volumetric collection methods in the controlled air environments shall be performed by properly trained individuals for all compounding risk levels. For low-, medium-, and high-risk level compounding, air sampling shall be performed at locations that are prone to contamination during compounding activities and during other activities such as staging, labeling, gowning, and cleaning. Locations shall include zones of air backwash turbulence within the laminar airflow workbench and other areas where air backwash turbulence may enter the compounding area. For low-risk level compounded sterile preparations within 12-hour or less beyond-use-date prepared in a primary engineering control that maintains an ISO Class 5, air sampling shall be performed at locations inside the ISO Class 5 environment and other areas that are in close proximity to the ISO Class 5 environment during the certification of the primary engineering control.

(vi) Air sampling frequency and process. Air sampling shall be performed at least every 6 months as a part of the re-certification of facilities and equipment. A sufficient volume of air shall be sampled and the manufacturer's guidelines for use of the electronic air sampling equipment followed. At the end of the designated sampling or exposure period for air sampling activities, the microbial growth media plates are recovered and their covers secured and they are inverted and incubated at a temperature and for a time period conducive to multiplication of microorganisms. Sampling data shall be collected and reviewed on a periodic basis as a means of evaluating the overall control of the compounding environment. If an activity consistently shows elevated levels of microbial growth, competent microbiology or infection control personnel shall be consulted. A colony forming unit (cfu) count greater than 1 cfu per cubic meter of air for ISO Class 5, greater than 10 cfu per cubic meter of air for ISA Class 7, and greater than 100 cfu per cubic meter of air for ISO Class 8 or worse should prompt a re-evaluation of the adequacy of personnel work practices, cleaning procedures,

operational procedures, and air filtration efficiency within the aseptic compounding location. An investigation into the source of the contamination shall be conducted. The source of the problem shall be eliminated, the affected area cleaned, and resampling performed. Counts of cfu are to be used as an approximate measure of the environmental microbial bioburden. Action levels are determined on the basis of cfu data gathered at each sampling location and trended over time. Regardless of the number of cfu identified in the pharmacy, further corrective actions will be dictated by the identification of microorganisms recovered by an appropriate credentialed laboratory of any microbial bioburden captured as a cfu using an impaction air sampler. Highly pathogenic microorganisms (e.g., gram-negative rods, coagulase positive staphylococcus, molds and yeasts) can be potentially fatal to patient receiving compounded sterile preparations and must be immediately remedied, regardless of colony forming unit count, with the assistance, if needed, of a competent microbiologist, infection control professional, or industrial hygienist.

(vii) Compounding accuracy checks. Written procedures for checking compounding accuracy shall be followed for every compounded sterile preparation during preparation and immediately prior to release, including label accuracy and the accuracy of the addition of all drug products or ingredients used to prepare the finished preparation and their volumes or quantities. At each step of the compounding process, the pharmacist shall ensure that components used in compounding are accurately weighed, measured, or subdivided as appropriate to conform to the formula being prepared.

(15) (No change.)

(e) Records. Any testing, cleaning, procedures, or other activities required in this subsection shall be documented and such documentation shall be maintained by the pharmacy.

(1) (No change.)

(2) Compounding records.

(A) Compounding pursuant to patient specific prescription drug orders or medication orders. Compounding records for all compounded preparations shall be maintained by the pharmacy [~~electronically or manually as part of the prescription drug or medication order, formula record, formula book, or compounding log~~] and shall include:

(i) the date and time of preparation;

(ii) a complete formula, including methodology and necessary equipment which includes the brand name(s) of the raw materials, or if no brand name, the generic name(s) or official name and name(s) of the manufacturer(s) or distributor of the raw materials and the quantities of each; however, if the sterile preparation is compounded according to the manufacturer's labeling instructions, then documentation of the formula is not required;

(iii) written or electronic signature or initials of the pharmacist or pharmacy technician or pharmacy technician trainee performing the compounding;

(iv) written or electronic signature or initials of the pharmacist responsible for supervising pharmacy technicians or pharmacy technician trainees and conducting finals checks of compounded pharmaceuticals if pharmacy technicians or pharmacy technician trainees perform the compounding function;

~~{+}~~ the quantity in units of finished preparation or amount of raw materials;}

(v) ~~{+}~~ the container used and the number of units of finished preparation prepared; and

(vi) [(vii)] a reference to the location of the following documentation which may be maintained with other records, such as quality control records:

(I) the criteria used to determine the beyond-use date; and

(II) documentation of performance of quality control procedures.

(B) Compounding records when batch compounding or compounding in anticipation of future prescription drug or medication orders.

(i) Master work sheet. A master work sheet shall be developed and approved by a pharmacist for preparations prepared in batch. Once approved, a duplicate of the master work sheet shall be used as the preparation work sheet from which each batch is prepared and on which all documentation for that batch occurs. The master work sheet shall contain at a minimum:

(I) the formula;

(II) the components;

(III) the compounding directions;

(IV) a sample label;

(V) evaluation and testing requirements;

(VI) specific equipment used during preparation;

and

(VII) storage requirements.

(ii) Preparation work sheet. The preparation work sheet for each batch of preparations shall document the following:

(I) identity of all solutions and ingredients and their corresponding amounts, concentrations, or volumes;

(II) lot number for each component;

(III) component manufacturer/distributor or suitable identifying number;

(IV) container specifications (e.g., syringe, pump cassette);

(V) unique lot or control number assigned to batch;

(VI) expiration date of batch-prepared preparations;

(VII) date of preparation;

(VIII) name, initials, or electronic signature of the person(s) involved in the preparation;

(IX) name, initials, or electronic signature of the responsible pharmacist;

(X) finished preparation evaluation and testing specifications, if applicable; and

(XI) comparison of actual yield to anticipated or theoretical yield, when appropriate.

(f) - (g) (No change.)

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

Filed with the Office of the Secretary of State on June 13, 2016.

TRD-201602968

Gay Dodson, R.Ph.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: July 24, 2016

For further information, please call: (512) 305-8037



SUBCHAPTER H. OTHER CLASSES OF PHARMACY

22 TAC §291.151

The Texas State Board of Pharmacy proposes amendments to §291.151 concerning Pharmacies Located in a Freestanding Emergency Medical Care Facility (Class F). The amendments, if adopted, clarify recordkeeping requirements and allow pharmacists to record certain information in the patient's chart in lieu of keeping a separate log.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will ensure appropriate records are maintained by Class F Pharmacies located in freestanding emergency medical care facilities. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Written comments on the amendments may be submitted to Allison Vordenbaumen Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-6778. Comments must be received by 5:00 p.m., August 1, 2016.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.151. *Pharmacies Located in a Freestanding Emergency Medical Care Facility (Class F).*

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

(d) Operational standards.

(1) Licensing requirements.

(A) A FEMCF pharmacy shall register annually or biennially with the board on a pharmacy license application provided by the board, following the procedures specified in §291.1 of this title (relating to Pharmacy License Application).

(B) A FEMCF pharmacy which changes ownership shall notify the board within 10 days of the change of ownership and apply for a new and separate license as specified in §291.3 of this title (relating to Required Notifications).

(C) A FEMCF pharmacy which changes location and/or name shall notify the board of the change within 10 days and file for an amended license as specified in §291.3 of this title.

(D) A pharmacy owned by a partnership or corporation which changes managing officers shall notify the board in writing of the names of the new managing officers within 10 days of the change, following the procedures in §291.3 of this title.

(E) A FEMCF pharmacy shall notify the board in writing within 10 days of closing, following the procedures in §291.5 of this title (relating to Closing a Pharmacy).

(F) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for issuance and renewal of a license and the issuance of an amended license.

(G) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(H) A FEMCF pharmacy, which also operates another type of pharmacy which would otherwise be required to be licensed under the Act, §560.051(a)(1), concerning community pharmacy (Class A), is not required to secure a license for the other type of pharmacy; provided, however, such license is required to comply with the provisions of §291.31 of this title (relating to Definitions), §291.32 of this title (relating to Personnel), §291.33 of this title (relating to Operational Standards), §291.34 of this title (relating to Records), and §291.35 of this title (relating to Official Prescription Records), to the extent such sections are applicable to the operation of the pharmacy.

(I) A FEMCF pharmacy engaged in the compounding of non-sterile preparations shall comply with the provisions of §291.131 of this title.

(2) Environment.

(A) General requirements.

(i) Each FEMCF shall have a designated work area separate from patient areas, and which shall have space adequate for the size and scope of pharmaceutical services and shall have adequate space and security for the storage of drugs.

(ii) The FEMCF pharmacy shall be arranged in an orderly fashion and shall be kept clean. All required equipment shall be clean and in good operating condition.

(B) Special requirements.

(i) The FEMCF pharmacy shall have locked storage for Schedule II controlled substances and other controlled drugs requiring additional security.

(ii) The FEMCF pharmacy shall have a designated area for the storage of poisons and externals separate from drug storage areas.

(C) Security.

(i) The pharmacy and storage areas for prescription drugs and/or devices shall be enclosed and capable of being locked by key, combination, or other mechanical or electronic means, so as to prohibit access by unauthorized individuals. Only individuals authorized by the pharmacist-in-charge may enter the pharmacy or have access to storage areas for prescription drugs and/or devices.

(ii) The pharmacist-in-charge shall consult with FEMCF personnel with respect to security of the drug storage areas, including provisions for adequate safeguards against theft or diversion of dangerous drugs, controlled substances, and records for such drugs.

(iii) The pharmacy shall have locked storage for Schedule II controlled substances and other drugs requiring additional security.

(3) Equipment and supplies. FEMCFs supplying drugs for outpatient use shall have the following equipment and supplies:

(A) data processing system including a printer or comparable equipment;

(B) adequate supply of child-resistant, moisture-proof, and light-proof containers; and

(C) adequate supply of prescription labels and other applicable identification labels.

(4) Library. A reference library shall be maintained that includes the following in hard-copy or electronic format and that pharmacy personnel shall be capable of accessing at all times:

(A) current copies of the following:

(i) Texas Pharmacy Act and rules;

(ii) Texas Dangerous Drug Act and rules;

(iii) Texas Controlled Substances Act and rules; and

(iv) Federal Controlled Substances Act and rules or official publication describing the requirements of the Federal Controlled Substances Act and rules;

(B) at least one current or updated general drug information reference which is required to contain drug interaction information including information needed to determine severity or significance of the interaction and appropriate recommendations or actions to be taken; and

(C) basic antidote information and the telephone number of the nearest regional poison control center.

(5) Drugs.

(A) Procurement, preparation, and storage.

(i) The pharmacist-in-charge shall have the responsibility for the procurement and storage of drugs, but may receive input from other appropriate staff of the facility, relative to such responsibility.

(ii) The pharmacist-in-charge shall have the responsibility for determining specifications of all drugs procured by the facility.

(iii) FEMCF pharmacies may not sell, purchase, trade, or possess prescription drug samples, unless the pharmacy meets the requirements as specified in §291.16 of this title (relating to Samples).

(iv) All drugs shall be stored at the proper temperatures, as defined in the USP/NF and in §291.15 of this title (relating to Storage of Drugs).

(v) Any drug bearing an expiration date may not be dispensed or distributed beyond the expiration date of the drug.

(vi) Outdated drugs shall be removed from dispensing stock and shall be quarantined together until such drugs are disposed of.

(B) Formulary.

(i) A formulary may be developed by an appropriate committee of the FEMCF.

(ii) The pharmacist-in-charge, consultant pharmacist, or designee shall be a full voting member of any committee which involves pharmaceutical services.

(iii) A practitioner may grant approval for pharmacists at the FEMCF to interchange, in accordance with the facility's formulary, for the drugs on the practitioner's medication orders provided:

(I) a formulary has been developed;

(II) the formulary has been approved by the medical staff of the FEMCF;

(III) there is a reasonable method for the practitioner to override any interchange; and

(IV) the practitioner authorizes pharmacist in the FEMCF to interchange on his/her medication orders in accordance with the facility's formulary through his/her written agreement to abide by the policies and procedures of the medical staff and facility.

(C) Prepackaging and loading drugs into automated medication supply system.

(i) Prepackaging of drugs.

(I) Drugs may be prepackaged in quantities suitable for internal distribution only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(II) The label of a prepackaged unit shall indicate:

(-a-) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(-b-) facility's lot number;

(-c-) expiration date; and

(-d-) quantity of the drug, if quantity is greater than one.

(III) Records of prepackaging shall be maintained to show:

(-a-) the name of the drug, strength, and dosage form;

(-b-) facility's lot number;

(-c-) manufacturer or distributor;

(-d-) manufacturer's lot number;

(-e-) expiration date;

(-f-) quantity per prepackaged unit;

(-g-) number of prepackaged units;

(-h-) date packaged;

(-i-) name, initials, or electronic signature of the packer; and

(-j-) signature or electronic signature of the responsible pharmacist.

(IV) Stock packages, repackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(ii) Loading bulk unit of use drugs into automated medication supply systems. Automated medication supply systems may be loaded with bulk unit of use drugs only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist. For the purpose of this clause, direct supervision may be accomplished by physically present supervision or electronic monitoring by a pharmacist. In order for the pharmacist to electronically monitor, the medication supply system must allow for bar code scanning to verify the loading of drugs, and a

record of the loading must be maintained by the system and accessible for electronic review by the pharmacist.

(6) Medication orders.

(A) Drugs may be administered to patients in FEMCFs only on the order of a practitioner. No change in the order for drugs may be made without the approval of a practitioner except as authorized by the practitioner in compliance with paragraph (5)(B) of this subsection.

(B) Drugs may be distributed only pursuant to the copy of the practitioner's medication order.

(C) FEMCF pharmacies shall be exempt from the labeling provisions and patient notification requirements of §562.006 and §562.009 of the Act, as respects drugs distributed pursuant to medication orders.

(D) In FEMCFs with a full-time pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the facility when the pharmacy is closed, the following is applicable.

(i) Prescription drugs and devices only in sufficient quantities for immediate therapeutic needs of a patient may be removed from the FEMCF pharmacy.

(ii) Only a designated licensed nurse or practitioner may remove such drugs and devices.

(iii) A record shall be made at the time of withdrawal by the authorized person removing the drugs and devices. The record shall contain the following information:

(I) name of the patient;

(II) name of device or drug, strength, and dosage form;

(III) dose prescribed;

(IV) quantity taken;

(V) time and date; and

(VI) signature or electronic signature of person making withdrawal.

(iv) The medication order in the patient's chart may substitute for such record, provided the medication order meets all the requirements of clause (iii) of this subparagraph.

(v) The pharmacist shall verify the withdrawal as soon as practical, but in no event more than 72 hours from the time of such withdrawal.

(E) In FEMCFs with a part-time or consultant pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the FEMCF when the pharmacist is not on duty, or when the pharmacy is closed, the following is applicable.

(i) Prescription drugs and devices only in sufficient quantities for therapeutic needs may be removed from the FEMCF pharmacy.

(ii) Only a designated licensed nurse or practitioner may remove such drugs and devices.

(iii) A record shall be made at the time of withdrawal by the authorized person removing the drugs and devices; the record shall meet the same requirements as specified in subparagraph (D) of this paragraph.

(iv) The pharmacist shall conduct an audit of patient's medical record according to the schedule set out in the policy

and procedures at a reasonable interval, but such interval must occur at least once in every calendar week that the pharmacy is open.

(7) Floor stock. In facilities using a floor stock method of drug distribution, the following is applicable for removing drugs or devices in the absence of a pharmacist.

(A) Prescription drugs and devices may be removed from the pharmacy only in the original manufacturer's container or prepackaged container.

(B) Only a designated licensed nurse or practitioner may remove such drugs and devices.

(C) A record shall be made at the time of withdrawal by the authorized person removing the drug or device; the record shall contain the following information:

(i) name of the drug, strength, and dosage form;

(ii) quantity removed;

(iii) location of floor stock;

(iv) date and time; and

(v) signature or electronic signature of person making the withdrawal.

(D) A pharmacist shall verify the withdrawal according to the following schedule.

(i) In facilities with a full-time pharmacist, the withdrawal shall be verified as soon as practical, but in no event more than 72 hours from the time of such withdrawal.

(ii) In facilities with a part-time or consultant pharmacist, the withdrawal shall be verified after a reasonable interval, but such interval must occur at least once in every calendar week that the pharmacy is open.

(iii) The medication order in the patient's chart may substitute for the record required in subparagraph (C) of this paragraph, provided the medication order meets all the requirements of subparagraph (C) of this paragraph.

(8) Policies and procedures. Written policies and procedures for a drug distribution system, appropriate for the freestanding emergency medical facility, shall be developed and implemented by the pharmacist-in-charge with the advice of the appropriate committee. The written policies and procedures for the drug distribution system shall include, but not be limited to, procedures regarding the following:

- (A) controlled substances;
- (B) investigational drugs;
- (C) prepackaging and manufacturing;
- (D) medication errors;
- (E) orders of physician or other practitioner;
- (F) floor stocks;
- (G) adverse drug reactions;
- (H) drugs brought into the facility by the patient;
- (I) self-administration;
- (J) emergency drug tray;
- (K) formulary, if applicable;
- (L) drug storage areas;

(M) drug samples;

(N) drug product defect reports;

(O) drug recalls;

(P) outdated drugs;

(Q) preparation and distribution of IV admixtures;

(R) procedures for supplying drugs for postoperative use, if applicable;

(S) use of automated medication supply systems;

(T) use of data processing systems; and

(U) drug regimen review.

(9) Drugs supplied for outpatient use. Drugs provided to patients for take home use shall be supplied according to the following procedures.

(A) Drugs may only be supplied to patients who have been admitted to the FEMCF.

(B) Drugs may only be supplied in accordance with the system of control and accountability established for drugs supplied from the FEMCF; such system shall be developed and supervised by the pharmacist-in-charge or staff pharmacist designated by the pharmacist-in-charge.

(C) Only drugs listed on the approved outpatient drug list may be supplied; such list shall be developed by the pharmacist-in-charge and the medical staff and shall consist of drugs of the nature and type to meet the immediate postoperative needs of the FEMCF patient.

(D) Drugs may only be supplied in prepackaged quantities not to exceed a 72-hour supply in suitable containers and appropriately pre-labeled (including name, address, and phone number of the facility and necessary auxiliary labels) by the pharmacy, provided, however that topicals and ophthalmics in original manufacturer's containers may be supplied in a quantity exceeding a 72-hour supply.

(E) At the time of delivery of the drug, the practitioner shall complete the label, such that the prescription container bears a label with at least the following information:

(i) date supplied;

(ii) name of practitioner;

(iii) name of patient;

(iv) directions for use;

(v) brand name and strength of the drug; or if no brand name, then the generic name of the drug dispensed, strength, and the name of the manufacturer or distributor of the drug; and

(vi) unique identification number.

(F) After the drug has been labeled, the practitioner or a licensed nurse under the supervision of the practitioner shall give the appropriately labeled, prepackaged medication to the patient.

(G) A perpetual record of drugs which are supplied from the FEMCF shall be maintained which includes:

(i) name, address, and phone number of the facility;

(ii) date supplied;

(iii) name of practitioner;

(iv) name of patient;

(v) directions for use;

(vi) brand name and strength of the drug; or if no brand name, then the generic name of the drug dispensed, strength, and the name of the manufacturer or distributor of the drug; and

(vii) unique identification number.

(H) The pharmacist-in-charge, or a pharmacist designated by the pharmacist-in-charge, shall review the records at least once in every calendar week that the pharmacy is open.

(10) Drug regimen review.

(A) A pharmacist shall evaluate medication orders and patient medication records for:

- (i) known allergies;
- (ii) rational therapy--contraindications;
- (iii) reasonable dose and route of administration;
- (iv) reasonable directions for use;
- (v) duplication of therapy;
- (vi) drug-drug interactions;
- (vii) drug-food interactions;
- (viii) drug-disease interactions;
- (ix) adverse drug reactions;
- (x) proper utilization, including overutilization or underutilization; and
- (xi) clinical laboratory or clinical monitoring methods to monitor and evaluate drug effectiveness, side effects, toxicity, or adverse effects, and appropriateness to continued use of the drug in its current regimen.

(B) A retrospective, random drug regimen review as specified in the pharmacy's policies and procedures shall be conducted on a periodic basis to verify proper usage of drugs not to exceed 31 days between such reviews.

(C) Any questions regarding the order must be resolved with the prescriber and a written notation of these discussions made and maintained.

(e) (No change.)

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

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Gay Dodson, R.Ph.

Executive Director

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8037



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER I. VALIDATION PROCEDURES

34 TAC §9.4009

The Comptroller of Public Accounts proposes amendments of §9.4009, concerning appraisal of recreation, park, and scenic land. We are also proposing amendments to the title of Subchapter I from Validation Procedures to Valuation Procedures. These amendments are to correct the title and to reflect updates and revisions to the guidelines for the appraisal of recreational, park, and scenic land.

The amendment proposes to adopt guidelines for the appraisal of recreational, park, and scenic land. The guidelines specify the methods to apply and procedures to use in appraising land that qualifies for special appraisal as recreational, park, and scenic land. The proposed amendment provides that appraisal districts are required to follow the procedures and methods set out in the guidelines.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by improving the administration of local property valuation and taxation. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposed rule may be submitted to Mike Esparza, Director, Property Tax Assistance Division, P.O. Box 13528 Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

These amendments are proposed under Tax Code, §5.05 (Appraisal Manuals and Other Materials) and §23.83 (Appraisal of Restricted Land) which provide the comptroller with the authority to prepare and issue publications relating to the appraisal of property and to promulgate rules specifying the methods to apply and the procedures to use in appraising recreational, park, or scenic lands, respectively, for ad valorem tax purposes.

These amendments implement Tax Code, §23.83 (Appraisal of Restricted Land).

§9.4009. Appraisal of Recreational [Recreation], Park, and Scenic Land.

Adoption of the "Guidelines for the Appraisal of Recreational, Park, and Scenic Land." These guidelines specify the methods to apply and the procedures to use in appraising land that qualifies for special appraisal as recreational, park, and scenic land. Appraisal districts are required to follow the procedures and methods set out in these guidelines. The Comptroller of Public Accounts adopts by reference the Guidelines for the Appraisal of Recreational, Park, and Scenic Land. The guidelines are accessible on our website. Copies of the guidelines can be obtained from the Comptroller of Public Accounts, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528. Copies also may be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999.

[The State Property Tax Board adopts by reference "Guidelines for the Appraisal of Recreational, Park, and Scenic Land" to be effective August 3, 1982. This document is published by and available from the State Property Tax Board, 9501 IH 35 North, P.O. Box 15900, Austin, Texas 78761.]

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 June 8, 2016.

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Lita Gonzalez

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: July 24, 2016

For further information, please call: (512) 475-0387



34 TAC §9.4010

The Comptroller of Public Accounts proposes amendments to §9.4010, concerning appraisal of public access airport property. We are also proposing amendments to the title of Subchapter I from Validation Procedures to Valuation Procedures. These amendments are to correct the title and to reflect updates and revisions to the guidelines for the appraisal of public access airport property.

The amendment proposes to adopt guidelines for the valuation of public access airport property. The guidelines specify the methods to apply and procedures to use in appraising property that qualifies for special appraisal as public access airport property. The proposed amendment provides that appraisal districts are required to follow the procedures and methods set out in the guidelines.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by improving the administration of local property valuation and taxation. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposed rule may be submitted to Mike Esparza, Director, Property Tax Assistance Division, P.O. Box

13528 Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Tax Code, §5.05 (Appraisal Manuals and Other Materials) and §23.93(e) (Appraisal of Restricted Land) which provide the comptroller with the authority to prepare and issue publications relating to the appraisal of property and to promulgate rules specifying the methods to apply and the procedures to use in appraising public access airport property, respectively, for ad valorem tax purposes.

The amendments implement Tax Code, §23.93 (Appraisal of Restricted Land).

§9.4010. Appraisal of Public Access Airport Property.

Adoption of the "Guidelines for the Valuation of Public Access Airport Property." These guidelines specify the methods to apply and the procedures to use in appraising property that qualifies for special appraisal as public access airport property. Appraisal districts are required to follow the procedures and methods set out in these guidelines. The Comptroller of Public Accounts adopts by reference the Guidelines for the Valuation of Public Access Airport Property. The guidelines are accessible on our website. Copies of the guidelines can be obtained from the Comptroller of Public Accounts, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528. Copies also may be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999.

[The State Property Tax Board adopts by reference "Guidelines for the Appraisal of Public Access Airport Property" to be effective January 1, 1983. This document is published by and available from the State Property Tax Board, 9501 IH 35 North, P.O. Box 15900, Austin, Texas 78761.]

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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