

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 2. TEXAS ETHICS COMMISSION

CHAPTER 40. FINANCIAL DISCLOSURE FOR PUBLIC OFFICERS

1 TAC §40.11

The Texas Ethics Commission (the commission) proposes new Texas Ethics Commission Rules §40.11, regarding the disclosure of income received from publicly traded corporations on a personal financial statement.

Section 572.023(b)(4) of the Government Code requires a personal financial statement (PFS) to include the "identification of each source" of income in excess of \$500 derived from interest, dividends, royalties, and rents. The law also requires the category of the amount of income to be disclosed. The form used for the PFS currently requires the source of that income to be disclosed by the source's full name and address.

Under the proposed rule, if a filer receives income over \$500 from a publicly held corporation in the form of interest, dividends, royalties, or rents, the corporation would be identified only by its full name, and no address would be required. The rule does not change the disclosure requirements for any other source of income or for any other section of the PFS form.

Natalia Luna Ashley, Executive Director, has determined that for the first five-year period the proposed new rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed new rule.

Ms. Ashley has also determined that for each year of the first five years the proposed new rule is in effect the public benefit will be clarity in the commission's rules regarding the disclosure of income received from publicly traded corporations on a PFS. The rule would also enhance the potential for individual participation in electoral and governmental processes by easing the burdens of disclosure without reducing the value of disclosure because publicly traded corporations would remain easily identifiable without an address. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed new rule.

The Texas Ethics Commission invites comments on the proposed new rule from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed new rule may do so at any commission meeting during the agenda item relating to the proposed new rule. Information

concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or on the Texas Ethics Commission's website at www.ethics.state.tx.us.

The new rule §40.11 is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed new rule, §40.11, affects §572.023 of the Government Code.

§40.11. Publicly Traded Corporation as Source of Income over \$500. For purposes of section 572.023(b)(4), Government Code, a publicly traded corporation is identified as a source of income by disclosing its full name in addition to the category of the amount of income.

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-201602986

Natalia Luna Ashley

Executive Director

Texas Ethics Commission

Earliest possible date of adoption: July 31, 2016

For further information, please call: (512) 463-5800



PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 53. MUNICIPAL SECURITIES SUBCHAPTER A. APPROVAL OF MUNICIPAL SECURITIES BY ATTORNEY GENERAL

1 TAC §§53.1 - 53.30

The Office of the Attorney General (OAG) proposes the repeal of §§53.1 - 53.30 of Subchapter A, Approval of Municipal Securities by Attorney General. The OAG is proposing updated rules at the same time as this proposed repeal.

Ms. Leslie Brock, Chief, Public Finance Division, OAG, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. Brock also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be to clarify and update the requirements for the approval of municipal securities by the OAG. There will be no effect on small businesses. There is no

anticipated economic cost to persons who are required to comply with the repeal as proposed.

Written comments on the proposal must be submitted no later than 30 days from the date of this publication by emailing the comments to leslie.brock@texasattorneygeneral.gov or by mailing the comments to Ms. Leslie Brock, Public Finance Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548.

The repeal is proposed in accordance with Chapters 1202, 2001, and §402.044 of the Government Code, which collectively authorize the OAG to adopt rules regarding its review of public securities that by law require OAG approval. In addition to Chapter 1202, other statutes require OAG review and approval before public securities and certain other obligations may be issued, including, but not limited to, §§1371.057, 1371.059, 1431.009, and 1431.011 of the Government Code, §§271.004, 271.005, and 372.028 of the Local Government Code, Chapter 45 of the Education Code, and §49.184 of the Water Code.

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

- §53.1. *Application.*
- §53.2. *Transcripts Submitted to Bond Division.*
- §53.3. *Content of Transcripts Submitted to the Bond Division.*
- §53.4. *Financial Publications.*
- §53.5. *Determinations of Bond Allowable and Annual Tax Funds Available for Debt Retirement.*
- §53.6. *Satisfaction of Tax Coverage.*
- §53.7. *Transcripts of Combination Tax and Revenue Public Securities.*
- §53.8. *Certification of Appropriated Funds.*
- §53.9. *Securities in Litigation.*
- §53.10. *Waiver of Notice.*
- §53.11. *Certification of the City Population.*
- §53.12. *Representations in Official Notices of Sale.*
- §53.13. *Limited Tax Obligations.*
- §53.14. *Estimates in Statements of Taxable Values.*
- §53.15. *Seals.*
- §53.16. *Issues of Refunding Bonds.*
- §53.17. *Refunding Issues by Consent.*
- §53.18. *Adequate Resources.*
- §53.19. *Then Current Conditions.*
- §53.20. *Applications for Bond Replacement.*
- §53.21. *Authorization Elections.*
- §53.22. *Federal Voting Rights Act Requirements.*
- §53.23. *Bond Counsel's Preliminary Letter.*
- §53.24. *Prior Issue Transcripts.*
- §53.25. *Partial, Preliminary, or Incomplete Transcripts.*
- §53.26. *Completion of Examination.*
- §53.27. *Review of and Additions to Transcript.*
- §53.28. *Additional Showings.*
- §53.29. *Novel or Uncommon Characteristics or Transactions.*
- §53.30. *Waiver of Rules.*

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 16, 2016.

TRD-201603063

Amanda Crawford

General Counsel

Office of the Attorney General

Earliest possible date of adoption: July 31, 2016

For further information, please call: (512) 936-7940



1 TAC §§53.1 - 53.22

The Office of the Attorney General (OAG) proposes a new Subchapter A consisting of §§53.1 - 53.22, concerning the Approval of Municipal Securities by Attorney General. OAG also concurrently proposes to repeal the existing §§53.1 - 53.30, which previously regulated the approval of municipal securities by the Attorney General.

Pursuant to state law, including primarily Chapter 1202 of the Government Code, public securities and other obligations issued by an agency, authority, board, public body, department, district, instrumentality, municipal corporation, political subdivision, public corporation or subdivision of the state, or a non-profit corporation acting for or on behalf of any such entities as provided by law (collectively referred to herein as "Issuers") must be submitted for approval to OAG. OAG must approve the public securities if it finds that the public security has been authorized in accordance with law. The proposed Subchapter A would update the general rules applicable to the submission of public securities and records of proceedings by Issuers and the review of such submissions by OAG in order to ensure the orderly and efficient review of such proceedings in compliance with state law.

New §53.1 concerns Application; new §53.2 concerns Form of Records; new §53.3 concerns Content of Transcripts; new §53.4 concerns Financial Publications; new §53.5 concerns Determination of Bond Allowable Rate; new §53.6 concerns Satisfaction of Coverage; new §53.7 concerns Transcripts of Combination Tax and Revenue Public Securities; new §53.8 concerns Appropriated Funds and Capitalized Interest; new §53.9 concerns Securities in Litigation; new §53.10 concerns Estimates in Statements of Taxable Values; new §53.11 concerns Seals; new §53.12 concerns Refunding Bonds; new §53.13 concerns Refunding Issues by Consent; new §53.14 concerns Elections; new §53.15 concerns Compliance with State and Federal Election Laws; new §53.16 concerns Submission and Approval of Transcripts; new §53.17 concerns Examination Fees; new §53.18 concerns Additional Showings; new §53.19 concerns Novel or Uncommon Characteristics or Transactions; new §53.20 concerns County State Highway Bonds; new §53.21 concerns Waiver of Rules; and new §53.22 concerns Interpretation.

Ms. Leslie Brock, Chief, Public Finance Division, OAG, has determined that for the first five-year period the new 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. Brock has determined that for each of the first five years following the adoption of the sections, the anticipated public benefit of the proposed sections will be to clarify and update the requirements for the approval of municipal securities by OAG. Also Ms.

Brock has determined that the proposed sections are not likely to have an adverse economic impact on micro-business or small business. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Written comments on the proposed sections must be submitted no later than 30 days from the date of this publication by emailing the comments to leslie.brock@texasattorneygeneral.gov, or by mailing the comments to Ms. Leslie Brock, Public Finance Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548.

The staff of the Public Finance Division will hold a public hearing on the proposed rules on July 26, 2016, at 1:30 p.m. in the Ground Floor Conference Room of the Price Daniel Building located at 209 West 14th Street, Austin, Texas 78701. The hearing is structured for the receipt of oral comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing.

The new sections are proposed in accordance with Chapters 1202, 2001, and §402.044 of the Government Code, which collectively authorize OAG to adopt rules regarding its review of public securities that by law require OAG approval. In addition to Chapter 1202, other statutes require OAG review and approval before public securities and certain other obligations may be issued, including, but not limited to, §§1371.057, 1371.059, 1431.009, and 1431.011 of the Government Code, §§271.004, 271.005, and 372.028 of the Local Government Code, Chapter 45 of the Education Code, and §49.184 of the Water Code.

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

§53.1. Application.

(a) General Application. This subchapter applies to all proposed public securities and records of proceedings submitted by issuers, other than nonprofit corporations and other conduit issuers, to the Office of the Attorney General for review, as required by Chapter 1202 of the Government Code or other applicable state law.

(b) Application to Nonprofit Corporations and Other Conduit Issuers. Sections 53.2, 53.9, 53.16 - 53.19, 53.21, and 53.22 of this subchapter shall apply to proposed public securities and records of proceedings submitted by nonprofit corporations and other conduit issuers to the Office of the Attorney General for review. Additional requirements for proposed public securities to be issued by nonprofit corporations and other conduit issuers are contained in subchapters L through P of this chapter.

(c) Additional Requirements. Additional subchapters may apply to transcripts submitted to the Office of the Attorney General depending on the type of public securities and the type of issuer.

(d) Definition of Public Securities. For the purposes of this subchapter, the term "public securities" means public securities as defined under §1202.001 of the Government Code and other obligations subject to review by the Office of the Attorney General under state law.

(e) Other Definitions: Except as otherwise provided by this subchapter, all terms used in this subchapter shall have the meaning ascribed to them in §1202.001 of the Government Code.

§53.2. Form of Records.

Records of proceedings shall be submitted to the Public Finance Division of the Office of the Attorney General for approval. All records of proceedings shall conform to the following requirements:

(1) each transcript shall be submitted in an appropriately sized expanding file folder;

(2) the transcript page size shall not exceed 8 1/2 by 11 inches, and each line of each page should be entirely legible. (Oversize documents, such as maps and charts, should be folded within the 8 1/2 by 11 inch requirement);

(3) each transcript shall contain a table of contents;

(4) each transcript shall have the table of contents keyed to right side tab numbers; and

(5) each transcript shall be arranged in chronological order or in some other consistent, logical arrangement that will permit an efficient review.

§53.3. Content of Transcripts.

(a) Transcript Requirements. Each transcript shall include the following, as applicable:

(1) Initial Public Securities. The initial public securities executed in accordance with applicable law;

(2) Authorizing Document. The authorizing ordinance, order or resolution and, as applicable, indenture of trust for the proposed public securities, including the following:

(A) citation to the legal authority for the issuance of the proposed public securities;

(B) the terms of the proposed public securities, including the title, numbering, denominations, date, persons authorized to sign, method of signing, principal and interest payment dates, redemption terms, if any, place of payment and registration and form of paying agent and registrar agreement, and substantially final form of the public securities; provided, however, that to the extent specific terms of the public securities have been lawfully delegated to a representative or committee for determination, those terms shall be set forth in the pricing certificate;

(C) citation to the legal authority for the issuer to construct or acquire the proposed improvements or services, to pledge the specified payment source, and, as applicable, to contract with other parties for payment of principal and interest and other payments relating to the proposed public securities;

(D) identification of a specified revenue source and/or a levy of a tax, which shall be pledged in amounts sufficient, within any applicable limitation, to pay the annual debt service requirements of the proposed public securities for the current year and each succeeding year during which the proposed public securities are outstanding. Cities and counties issuing public securities supported in whole or in part by ad valorem taxes constitutionally must provide for an annual levy sufficient to collect a sinking fund of not less than 2% of the principal amount of the proposed public securities regardless of the year in which the first principal payment is due;

(E) a reasonably complete and detailed description of the improvements, services, or projects being financed and the intended use of the proceeds, including whether any of the proceeds are being used to repay an interim borrowing, reimburse the issuer for amounts previously expended, pay capitalized interest or fund a reserve fund;

(F) a recitation of the following:

(i) the manner of the sale, whether negotiated or competitively bid,

(ii) the identification of the purchaser,

(iii) the purchase price, including any discount or premium, and

(iv) the finding that the terms of the sale were in the issuer's best interest, and additionally, if competitively bid, that the sale was awarded based on the lowest net effective interest rate, or other applicable standard as permitted by law;

(G) for proposed public securities with a floating, variable, or adjustable interest rate, a provision limiting the maximum rate of interest to:

(i) a net effective interest rate not to exceed the maximum interest rate provided for and calculated in accordance with Chapter 1204 of the Government Code; or

(ii) such other limit applicable to the securities and/or the issuer;

(H) incorporation of the provisions of Title 6 of the Property Code (Unclaimed Property) regarding the disposition and reporting of unclaimed principal and interest payments, specifically requiring compliance with the reporting requirements of Chapter 74 of the Property Code;

(I) provisions to account for the use of surplus public securities proceeds, premiums, and interest earnings on public securities proceeds;

(J) if issuing public securities under voted authorization, recitation of amounts previously issued under such voted authorization and the amount of voted authorization remaining after the issuance of the proposed public securities; provided, however, that if a determination of the amount of the public securities to be issued has been lawfully delegated, the amount of remaining voted authorization shall be stated in the pricing certificate; and

(K) approval of the form of contracts included in the transaction, as applicable;

(3) Pricing Certificate. A pricing certificate, when appropriate to facilitate a lawful delegation of specific terms of proposed public securities to an identified representative of the issuer. The certificate shall be signed by the representative(s) identified in the authorizing ordinance, order, or resolution, and shall reflect compliance with any parameters established therein;

(4) General Certificate. A general certificate, signed by a senior executive officer or an elected or appointed official of the issuer, and the official custodian of records of the issuer, and, if appropriate, any other officers or authorized representatives of the issuer, which certificate includes the following:

(A) for all public securities, a debt retirement schedule that:

(i) is current as of the date of the sale of the proposed public securities;

(ii) includes the combined debt service requirements of the proposed public securities and all other outstanding indebtedness payable in whole or in part from the same source regardless of lien priority, including any additional series of public securities being issued at the same time as the proposed public securities,

(iii) calculates interest as follows:

(I) at the actual interest rates sold, if known;

(II) in the case of future interest for variable rate debt, at the lesser of the maximum interest rate permissible under the ordinance, order, resolution or trust indenture authorizing the debt, or the maximum rate under applicable state law; or

(III) in the case of commercial paper, at the prevailing interest rate for governmental issuers with the same unenhanced credit rating as the issuer with principal (the maximum authorized program amount) shown as being amortized such that there will be level debt service payments over the life of the commercial paper program or twenty (20) years, whichever is greater, but not to exceed thirty (30) years or, if applicable, in accordance with §1371.057(c) of the Government Code;

(iv) for outstanding indebtedness or proposed public securities payable from a combination of ad valorem taxes and another pledged source, includes the debt service requirements as though such indebtedness were payable solely from ad valorem taxes, unless it is shown that such indebtedness can be and is paid, or with respect to proposed public securities, is intended to be paid, from the other pledged sources;

(v) for cities and counties constitutionally required to levy taxes sufficient to collect an annual 2% sinking fund for principal, reflects the annual 2% sinking fund amount in the debt service requirements even if no principal is due in a given year; and

(vi) for indebtedness with a related interest rate management agreement, as that term is defined in Chapter 1371 of the Government Code, taking into account the effect of the agreement on the interest rate(s) of the indebtedness in calculating the debt service requirements;

(B) for all proposed revenue and combination limited tax and revenue public securities:

(i) a history of the pledged revenue collections during the most recent three year period or, if revenues are being relied upon to show coverage, a revenue projection in the event a revenue history is unavailable or insufficient to provide debt service coverage. A revenue projection must include an explanation of the circumstances, such as a recent increase in the applicable rates, fees, or charges, that support a projected increase in revenues;

(ii) for a revenue projection based on an expanded system, a certificate of a licensed engineer or qualified consultant, as appropriate;

(iii) a copy of the current rate order or ordinance or adopted rate schedule of the issuer; and

(iv) a statement of the annual operating and maintenance expenses for the most recent year;

(C) for ad valorem tax public securities, certified statements of taxable values, and, if an issuer intends to rely on a collection rate greater than 90%, a certificate of the issuer's collection rates for the most recent three years;

(D) for general law city ad valorem tax public securities, certification of the type of general law city and the city's population as of the next immediately preceding federal decennial census;

(E) for home rule cities, certification of the date of the most recent amendment to the city charter and a certified copy of any charter amendment not previously submitted with a transcript;

(F) for issuers other than municipalities, citation to the statutory and, if applicable, constitutional provisions authorizing the issuer's creation and, if applicable, its taxing power;

(G) certification of incumbency, including the following:

(i) certification of the incumbency of each issuer's executive or administrative officer subscribing any document in the transcript; and

(ii) certifications of incumbency for city secretaries, county clerks, and other officers customarily certifying incumbencies, which certifications may be made by the presiding officer of the governing body of the issuer or, in his or her absence, any other member of the governing body; and

(H) at the discretion of the issuer, any other certifications required by this chapter;

(5) Purchase Agreement. For negotiated sales, executed original of any purchase agreement relating to the sale of the proposed public securities;

(6) Bid Form. For competitive sales, evidence of the winning bid form;

(7) Insurance. For financings for which insurance is obtained:

(A) a copy of the insurance commitment letter, executed by the insurer, if applicable;

(B) certified proceedings authorizing the insurance, which may be in the ordinance, order or resolution authorizing the public securities;

(C) if a statement of insurance is to be printed on the public securities, express authorization by the issuer in the ordinance, order or resolution authorizing the public securities or pricing certificate; and

(D) in the case of any agreement entered into with the insurer, if the agreement constitutes an authorized credit agreement pursuant to Chapter 1371 of the Government Code, submission of the proceedings authorizing the agreement;

(8) Offering Document. An official statement or other offering document; if a preliminary official statement is initially provided, a final official statement is to be provided prior to approval by the Office of the Attorney General;

(9) Affidavit of Publication. An affidavit of publication, executed by a representative of the newspaper, including a confirmation that the newspaper is of general circulation within the boundaries of the issuer, if a specific finding to that effect has not been made by the governing body of the issuer, and a recitation that the newspaper meets the requirements §2051.044 of the Government Code with a copy of a clipping of the published material attached;

(10) Paying Agent/Registrar Agreement. The paying agent/registrar agreement in substantially final form containing the following:

(A) a statement that the paying agent/registrar accepts the duty to act as paying agent and/or registrar, as appropriate;

(B) a statement that the paying agent/registrar is subject to a good faith and reasonable care standard;

(C) a statement that any indemnification provision is explicitly limited "to the extent permitted by law" and excludes negligence and willful misconduct on the part of the paying agent/registrar;

(D) a statement that any early termination provisions shall not be effective until a successor paying agent/registrar has been appointed by the issuer and such appointment has been accepted;

(E) if the agreement provides that a bank will not release contents of the register to anyone other than the issuer, a state-

ment qualifying that such a provision may be effective "except upon court order or as otherwise required by law";

(F) if the agreement addresses the bank's right to file any legal action, a statement expressly limiting the venue and jurisdiction for such an action to the State of Texas;

(G) a statement that in the event of a conflict between the agreement and the authorizing ordinance, order or resolution, the authorizing ordinance, order or resolution controls;

(H) a statement that the agreement is governed by Texas law;

(I) a statement that any moneys held by the bank are subject to the unclaimed property laws of the State of Texas; and

(J) collateralization language;

(11) Certificate of Authority. Evidence of authority to sign for any persons who signed any transcript document in a representative capacity (the representative's own verification is not sufficient);

(12) Acknowledgment of Special Meeting. Acknowledgment of timely receipt of notice of a special meeting signed by each member of the issuer's governing body who failed to attend the meeting of the governing body at which a transcript document was approved;

(13) Certification of Official Actions. A certificate for each action taken by the governing body relating to the issuance of the proposed public securities, executed by the custodian of records of the governmental body, indicating presence of appropriate quorum, type of meeting (special, regular, or emergency), introduction and adoption of the action and the number of votes for, against, and abstaining. Such actions must be certified as true and correct copies of originals on file in the body's official minutes and all meetings at which such actions have been taken must be certified as having been held in full compliance with Chapter 551 of the Government Code;

(14) Signature Identification and No-Litigation Certificate. An undated signature identification and no-litigation certificate signed by the officers who executed the proposed public securities that complies with the following requirements:

(A) signatures shown on the certificate must substantially conform to the signatures on the proposed public securities;

(B) signatures must be certified as genuine by a bank or acknowledged by a notary public;

(C) certificate must include certification that no litigation is pending or to the best of the knowledge of the issuer, threatened, against the issuer seeking to restrain or enjoin the issuance of the public securities, questioning the issuance or sale of the public securities or the authority or action of the governing body relating to the issuance or sale of the public securities, or the levy of taxes or collection of revenues or the pledge of taxes or revenues to the principal of and interest on the securities, as appropriate, or materially affecting the assessment or collection of taxes to pay the principal of and interest on the public securities, when appropriate; and that neither the corporate existence or boundaries of the issuer nor the right to hold office of any member of the governing body of the issuer or any other elected or appointed official of the issuer is being contested or otherwise questioned; and

(D) authorization for the Office of the Attorney General to insert the date of the approving opinion on the certificate must be provided, along with a representation that the issuer will notify the Office of the Attorney General by phone if it becomes aware of any changes with respect to any representation in the certificate or any transcript document to which the issuer is a party that occur between the date of the approving opinion and the date of closing;

(15) Reimbursement of Expenditures. If applicable, documentation evidencing intent to use the public security proceeds to reimburse the issuer for its prior expenditures;

(16) Bond Review Board Information. Bond Review Board information required by §1202.008 of the Government Code along with an additional copy of the official statement; and

(17) Election Proceedings. Certified election proceedings as provided in §53.14 of this subchapter.

(b) Execution of Documents. All certificates must be originally signed and, if required, sealed. All issuer contracts providing security or otherwise affecting the marketing or terms of public securities and governmental orders must either be originally signed and, if required, sealed, or legible copies certified to be true and correct copies.

§53.4. Financial Publications.

The following financial publications circulated within the State of Texas are approved for publication of notices of public security sales:

- (1) The Texas Bond Reporter;
- (2) The Bond Buyer; and
- (3) The Wall Street Journal.

§53.5. Determination of Bond Allowable Rate.

The following apply to determinations of the ad valorem tax bond allowable rate:

(1) "bond allowable rate" means the portion of the maximum authorized tax rate available for debt service;

(2) except as provided below, and except for good cause shown, all political subdivisions have a bond allowable rate equal to 2/3 of the maximum tax rate authorized by law;

(3) home rule cities and general law cities authorized by §5 of Article XI of the Texas Constitution to levy a tax of up to \$2.50 per \$100 valuation have a bond allowable rate of \$1.50 per \$100 valuation, unless the tax rate is further limited by the city's charter;

(4) counties have a bond allowable rate of \$.40 per \$100 valuation, plus an additional bond allowable rate of 1/2 of the tax rate voted for "further maintenance of public roads" authorized by §9 of Article VIII of the Texas Constitution up to a maximum additional tax of \$.075 per \$100 for public securities payable from that tax;

(5) annual tax funds available for debt service shall be calculated assuming a collection rate of 90% or a higher rate based on the average collection rate for the most recent three years, as certified by the issuer. In calculating the average collection rate, the annual collection rate used for any year may not exceed 100%;

(6) the bond allowable rate calculation for school district bonds and maintenance tax notes shall be determined in accordance with applicable law or with an All Bond Counsel Letter addressing the matter; and

(7) the bond allowable rate may be further restricted by law or an All Bond Counsel Letter in certain instances.

§53.6. Satisfaction of Coverage.

The maximum annual debt service reflected in the debt retirement schedule may not exceed:

(1) for proposed public securities supported in whole or in part by ad valorem taxes, the product of the bond allowable rate, the applicable collection rate, and the issuer's most recent certified taxable assessed valuation; and/or

(2) for proposed public securities supported by revenues, the issuer's certified historical or projected revenue collection amount, as applicable.

§53.7. Transcripts of Combination Tax and Revenue Public Securities.

Generally, transcripts for proposed public securities supported by a combination of ad valorem taxes and other revenues shall meet the transcript requirements for both ad valorem tax public securities and revenue public securities as provided by this chapter.

§53.8. Appropriated Funds and Capitalized Interest.

(a) When an issuer must pay debt service on a proposed ad valorem tax public security or combination ad valorem tax and revenue public security before the initial tax levy can be collected, the issuer must provide certification that the issuer has appropriated lawfully available funds for such payment to the extent not paid from capitalized interest.

(b) For city and county ad valorem tax public securities, the proceeds may be used to pay interest only for the initial period during which the city or county is unable to levy and collect taxes in advance of the payment date.

§53.9. Securities in Litigation.

Pending litigation will generally disqualify proposed public securities from approval when the pending litigation concerns the public securities, the majority of the titles to office, the issuer's creation, the boundaries of a traditional governmental issuer if a final judgment may reduce the tax base or revenue of the issuer such that the payment source for the public securities is materially impaired, or when pending litigation in any other way challenges the authority of the issuer to issue the public securities or undertake the project being financed.

§53.10. Estimates in Statements of Taxable Values.

Except where otherwise permitted by law, estimates in statements of taxable values are not permissible unless the issuer has been in operation for a period of less than 18 calendar months.

§53.11. Seals.

Seals must bear an inscription of the official title of the issuer as it appears in the transcript. Seals on certificates must exactly correspond to seals on securities.

§53.12. Refunding Bonds.

(a) Definitions. For purposes of this section, the term "bonds" includes commercial paper used for refunding purposes, and the term "public securities" includes other obligations authorized to be refunded by law that do not constitute public securities under §1202.001 of the Government Code.

(b) Types of Refundings. Refundings may be accomplished by the issuance of advance or current refunding bonds sold for cash or exchange refunding bonds issued in exchange for the refunded obligations. For state law purposes, all refundings in which the public securities being refunded are not paid and discharged the same day as the refunding bonds are issued are considered to be "advance refundings."

(c) Advance Refundings. Transcripts for net defeasance advance refunding must include documentation from an accounting firm or other qualified entity, other than the issuer, verifying the sufficiency of the investments of the escrowed proceeds to redeem on the redemption date or pay at maturity, as applicable, the refunded public securities. For a gross defeasance, a certificate of sufficiency from the paying agent for the refunded obligations or other qualified entity, other than

the issuer, is required. For purposes of this section, "net defeasance" means a deposit of refunding proceeds upon closing in escrow, which requires the accrual of investment earnings in order to provide sufficient funds to pay the redemption price on the redemption date; and "gross defeasance" means a deposit of refunding proceeds upon closing, which is sufficient to pay the redemption price on the redemption date without further investment. For an advance refunding pursuant to Subchapter C of Chapter 1207 of the Government Code:

(1) the financial institution with whom the refunding bond proceeds are to be deposited must enter into an escrow or similar agreement if required by §1207.062 of the Government Code, or otherwise execute an agreement or certificate confirming its agreement to hold the refunding proceeds in trust for the owners of the refunded public securities; each agreement shall collateralize uninvested funds until their payment at redemption to the extent not insured by the Federal Deposit Insurance Corporation; and

(2) a certification of incumbency, including specimen signatures, and corporate authority of the financial institution executing an escrow or similar agreement must be included in the transcript.

(d) Paying Agent for Refunded Public Securities. All paying agents for public securities to be redeemed must acknowledge:

(1) receipt of a notice of redemption and, in cases in which a notice of redemption is required to be published or mailed to the registered owners prior to the delivery of the refunding bonds, evidence of such publication or a certification by the paying agent/registrar as to provision of notice to registered owners must be included in the transcript; and

(2) satisfaction of paying agent fees; if fees will not be paid at closing, the paying agent must certify that it will not look to the bond proceeds as payment for its fees but its sole remedy will be an action for payment under the paying agent agreement.

(e) Exchange Refundings. Exchange refunding bonds issued pursuant to the authority of §1207.081 of the Government Code may be sent to the Comptroller for registration after approval if the transcript includes instructions from the issuer to the paying agent for the refunding bonds to hold the bonds and deliver them only upon surrender of the public securities being refunded, and a representation that the refunding bonds will be delivered to the paying agent for further delivery as instructed and not to any other party, or provides a similar mechanism for ensuring delivery only in exchange for the public securities being refunded.

(f) Combination New Money and Refunding Public Securities. For combination new money/refunding bonds issued pursuant to Chapter 1207 of the Government Code, the issuer must provide documentation in accordance with these rules evidencing compliance with any election, notice, or publication requirements for the new money portion.

(g) Public Purpose and Required Findings. A refunding pursuant to Chapter 1207 of the Government Code for which the aggregate amount of payments to be made on the refunding bonds will or may exceed the aggregate amount of payments to be made on the public securities being refunded must include the finding required by §1207.008(a)(1) and must include the finding required by §1207.008(a)(2), unless, as provided by subsection (b) of that section, the governing body of the issuer determines and states in the order, ordinance, or resolution authorizing the refunding that the manner in which the refunding is being executed does not make it practicable to make the determination required by subsection (a)(2) of that section. Refunding transcripts must include a debt service savings schedule showing the amount of debt service savings or loss, reflecting the

calculation of any issuer contribution and showing the methodology used. If there is no gross savings or the issuer has made a finding of impracticability under §1207.008(b), a statement must be included in the bond order, ordinance, or resolution explaining the public purpose of the refunding.

(h) Submission of Refunded Public Securities Documents. All refunding transcripts must contain a copy of the order, ordinance or resolution authorizing, or a copy of the trust indenture securing, the public securities being refunded. The documentation submitted should include the pricing certificate for public securities sold pursuant to delegated authority.

(i) Refunding Assumed Public Securities. For municipal refunding bonds being issued to refund public securities for which the obligation to pay has been assumed through annexation of another political subdivision or special district, the following must be included in the transcript:

(1) if applicable, a certified copy of the action taken by the governing body that conducted the annexation calling the public hearing and authorizing publication of the notice of the hearing;

(2) if applicable, an original or certified copy of the affidavit of publication of the notice of the hearing with the newspaper clipping attached; and

(3) a certified copy of the action taken by the governing body annexing the land and assuming the debt.

§53.13. Refunding Issues by Consent.

When refunded public securities are being redeemed by consent of the holders thereof, written evidence of such consent must be included in the transcript.

§53.14. Elections.

(a) Types of Elections. Proceedings of the following elections must be submitted with the first transcript of proposed public securities utilizing the authority acquired through the election:

(1) an election authorizing the issuance of public securities;

(2) an election authorizing the levy or imposition of a tax or other security pledged to the payment of public securities;

(3) an election creating or incorporating, or confirming the creation of, an issuer;

(4) an election approving a home rule charter for a municipality; and

(5) elections discussed in other subchapters of this chapter. Proceedings of state elections, including amendments to the Constitution, are not required.

(b) Election Contest Period. When the proceedings of an election held pursuant to the Election Code are submitted as part of the record of proceedings, the proposed public securities will not be approved until the time for filing a petition for an election contest has expired in accordance with §233.006 of the Election Code or, if an election contest has been filed, a final, nonappealable judicial order that does not overturn the election has been obtained.

(c) Election Proceedings. Election proceedings must include the following:

(1) Official Action Calling the Election. A certified copy of the action taken by the governing body calling the election; the official action must include the elements required by all applicable law;

(2) Election Notice. Affidavits of publication, and/or certificates of posting or mailing, as required by law, of notice of an elec-

tion, in English and other languages as required by law with a copy of the election notice; the election notice must contain the elements required by applicable law;

(3) Official Action Canvassing the Election. A certified copy of the action taken by the governing body canvassing the results of the election, including the total number of votes for and against a proposition;

(4) Compliance with the Election Code. Certification as to compliance with the Election Code, including particularly the giving of notice of an election to the county clerk pursuant to §4.008 of the Election Code and the bilingual requirements of Chapter 272 of the Election Code, or explaining why these requirements are not applicable to the election; and

(5) Home Rule Charter Election. For an election approving a home rule charter for a municipality, certification as to compliance with §9.003(b) and §9.007 of the Local Government Code.

§53.15. Compliance with State and Federal Election Laws.

When election proceedings are submitted as part of a record of proceedings, the general certificate shall include a certification confirming that the election was conducted in accordance with all applicable state and federal laws.

§53.16. Submission and Approval of Transcripts.

(a) Submitting Attorney. A transcript must be submitted by an attorney licensed in Texas.

(b) Submission Deadlines. An issuer must submit its record of proceedings at least 10 working days prior to closing for traditional financings, and at least 12 working days prior to closing for nonprofit corporation or other conduit issuer financings. In the cover letter for the transcript submission, bond counsel must advise the Public Finance Division of public securities requiring the delivery of an approving opinion earlier than normally provided and must submit the record of proceedings a corresponding amount of additional time prior to the proposed closing date. These time periods may be increased with advance notice from the Public Finance Division in an All Bond Counsel Letter. Record of proceedings must be submitted in substantially final form. Preliminary or pro-forma proceedings will not be accepted for review without prior approval for good cause shown when the current Public Finance Division workload allows. Black-lined pages identifying changes must accompany any changed pages to the record of proceedings. An issuer's failure to submit a substantially complete record of proceedings prior to the expected release date of a preliminary approval letter under subsection (d) of this section may prevent the release of approved public securities by the proposed closing date.

(c) Initial Public Securities. Initial public securities must be submitted no later than five working days prior to closing.

(d) Preliminary Approval Letters. No preliminary approval letter from the Public Finance Division should be expected until the end of the fifth working day preceding the date set for closing, or an earlier date as requested by bond counsel in writing, if the time requirements for an earlier approval date have been met. If the issuer fails to submit a substantially complete record of proceedings, the Public Finance Division may delay the release of the preliminary approval letter until such time as a substantially complete record of proceedings is received. After receipt by bond counsel of a preliminary approval letter relative to a given issue, bond counsel shall supply a written response to any questions, enclosing, when requested, missing or substituted documentation. Intervening telephone discussion is welcome, and confirmation of any verbal waivers or modifications to the preliminary approval requirements should be included in the reply letter.

(e) Submission of Final Documents. Any outstanding requirements for final approval as well as the executed, final versions of documents originally submitted in unexecuted or uncertified form, must be submitted no later than three working days prior to closing. Exceptions to this requirement may be granted by the Public Finance Division for good cause, if the current workload allows.

(f) Registration of Public Securities. If all requirements have been satisfied, approved public securities generally will be sent by the Public Finance Division to the Texas Comptroller of Public Accounts for registration two days prior to the proposed closing date.

(g) Approval of Certain Contracts. For record of proceedings in which specific approval by the Office of the Attorney General of a contract providing revenue or security to pay the public security is required, the proceedings, including the contract, must be supplied in final and executed or certified form by the time of approval.

(h) Agreements to be Registered by Texas Comptroller of Public Accounts. For agreements required by law to be registered by the Texas Comptroller of Public Accounts, such as lease purchase agreements, the issuer must submit two fully executed agreements. One will be registered with the Texas Comptroller of Public Accounts and returned to the issuer, and the second will remain with the transcript file.

(i) No Guarantee of Final Approval. Receipt of a preliminary approval letter does not constitute a guarantee of final approval of the public securities and should not be relied upon as such. Closings may be delayed if required documents are not timely filed or if there are unresolved legal issues. Furthermore, the Office of the Attorney General does not represent, assure or guarantee completion of transcript examination or the issuance of transcript approval by any specific date or time.

(j) Calculation of Deadlines. For calculations under this section, the day of submission is counted if the record of proceedings is received by 3:00 p.m., but the day of closing is not counted. If bond counsel states that it is satisfactory for the public securities to be registered by the Comptroller of Public Accounts the day before closing, then one day may be subtracted from the time requirements. If approval is requested a certain number of days prior to closing, then the time requirements are counted back from the requested approval day, not from closing.

(k) Review of Forward Deliveries. An opinion for forward delivery public securities will not be delivered until shortly before the delivery date of the public securities. A preliminary approval letter will be provided, and subsequently, if requested, the reviewing attorney will confirm that all outstanding requirements have been satisfied, to the extent this has occurred. An extensive "settlement certificate" generally setting forth information of the nature required to be in general and no-litigation certificates and confirming that there have been no material changes made to the transcript previously reviewed by this office will be required before the opinion is given.

(l) Return of Record of Proceedings. A record of proceedings on file with the Public Finance Division for six (6) months with no action will be returned to bond counsel. Should any such proceedings be resubmitted, a new fee will be required.

(m) Facsimile Transmissions. Unless specifically requested or approved by the Public Finance Division, no fax transmissions of more than 20 pages may be sent to the Public Finance Division. Unless specifically requested, material should not be faxed in the late afternoon or evening if it is being sent by overnight delivery.

§53.17. Examination Fees.

Section 1202.004 of the Government Code sets out the fee amounts for submitting a public security and/or a record of proceedings to the Office of the Attorney General for examination and approval.

§53.18. Additional Showings.

If independent investigation or extrinsic evidence relating to any public securities proceedings indicates the need for other or additional showings by the issuer to satisfy any legal requirements precedent to the approval of such proceeding, approval of such proceedings and the issue subject thereof may be withheld pending such showings being furnished to the Public Finance Division.

§53.19. Novel or Uncommon Characteristics or Transactions.

Issuers contemplating authorization, issue, and sale of public securities not specifically addressed in these rules or which contain novel or uncommon characteristics are encouraged to present preliminary plans to the Public Finance Division for review and comment before taking official action for issuance. The Public Finance Division is also willing to pre-review transcripts for unusual or particularly complex transactions, provided the transcripts are accompanied by the appropriate fee.

§53.20. County State Highway Bonds.

An election for county limited ad valorem tax bonds for state highway purposes is not required in order to issue bonds pursuant to Chapter 1479 of the Government Code.

§53.21. Waiver of Rules.

Subject to specific requirements set out in the Constitution of the State of Texas, applicable statutes, or applicable city charter, the rules for public securities promulgated herein may be waived by the Public Finance Division upon a showing of good cause.

§53.22. Interpretation.

These rules and the applicable laws have been and will be interpreted from time to time by the issuance of All Bond Counsel Letters by the Public Finance Division pursuant to §402.044 of the Government Code. All substantive All Bond Counsel Letters from November 1987, and selected letters from before that date, are on the Attorney General's website.

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 16, 2016.

TRD-201603064

Amanda Crawford

General Counsel

Office of the Attorney General

Earliest possible date of adoption: July 31, 2016

For further information, please call: (512) 936-7940



PART 8. TEXAS JUDICIAL COUNCIL

CHAPTER 175. COLLECTION IMPROVEMENT PROGRAM

The Texas Judicial Council (Council) proposes to repeal the existing Chapter 175 of Title 1 of the Texas Administrative Code (1 TAC §§175.1 - 175.7) and proposes a new Chapter 175 (1 TAC §§175.1 - 175.6) concerning the Collection Improvement Program (Program). The purpose of the Council's actions is to revise the current Program components and requirements to ensure that compliance with the Program does not result in an un-

due hardship on defendants and defendant's dependents and to clarify that the Program is not intended to apply to defendants who have been determined by a court to be unable to pay any portion of the assessed costs, fines, and fees without undue hardship to the defendant or the defendant's dependents.

Summary of Proposed Changes

The following is a section-by-section discussion of the difference between the current rules (1 TAC §§175.1 - 175.7) which the Council is proposing to repeal and new Chapter 175 (1 TAC §§175.1 - 175.6) proposed by the Council.

§175.1. Purpose and Scope.

Proposed §175.1 deletes the word "Source" from the title of the current §175.1 and clarifies the following:

- 1) the purpose of the rules is to improve defendant's compliance with court ordered costs, fines and fees without imposing undue hardship on defendants and defendant's dependents;
- 2) the Program components do not apply to cases in which the court has determined that a defendant is unable to pay a portion of the assessed costs, fines and fees;
- 3) courts may utilize local program staff to monitor compliance with court orders in cases that don't fall under a local collections improvement program, such as when a defendant has been ordered to satisfy the assessed costs, fines and fees through community service or other non-monetary compliance options; and
- 4) the Program is not intended to alter the legal authority or discretion of a judge regarding the determination of whether to waive or the method to satisfy the payment of costs, fines and fees, or how to adjudicate any aspect of the case.

§175.2. Definitions.

Proposed §175.2 adds the following definitions: 1) discretionary income, 2) household income, 3) non-monetary compliance, and 4) spouse. The definition of "eligible case" is moved from this section to §175.5, the compliance review standards section. The proposed rule also adds "e-mail" to the list of "contact information" in that definition. Lastly the proposed rule deletes the following definitions because they are unnecessary: 1) contact, 2) designated counties, and 3) designated municipalities.

§175.3. Collection Improvement Program Components.

Proposed §175.3 makes several changes to the current rule. The current rule separates the Program components into two subsections (current §175.3(c) and (d)). Proposed §175.3 lists all of the component in one subsection (new §175.3(a)) and rearranges the order of the components so that they are consistent with the processing of a case by local program staff.

§175.3 also makes the following changes:

- 1) Application or Contact Information. Under the current rule, local program staff does not have to collect an application with payment ability information from defendants who have a payment plan set by the judge before the case is referred to the local program. They only need to collect contact information. Under the proposed rule, staff must obtain from these defendants a signed statement regarding whether the defendant has the ability to pay the assessed costs, fines and fees under the imposed terms without undue hardship to the defendant and defendant's dependents. If the defendant is unable to make this acknowledgment, the local program staff must obtain contact information and payment ability information from the defendant. The

proposed rule does not change the requirement that local program staff collect from all other defendants an application with payment ability information and contact information.

2) Defendant Interviews. The proposed rule would require local program staff to review payment ability information obtained from defendants who have a payment plan set by the judge before the case is referred to the local program if they do not provide an acknowledgment that they have the ability to pay. If they do provide this acknowledgement, local program staff would only be required to review the terms of the payment plan set by the judge with the defendant as is provided under the current rule. The proposed rule does not change the current local program requirements for interviewing other defendants. Local program staff would continue to review payment ability information with these defendants.

3) Referral to Court for Review of Defendant's Ability to Pay. This is a new component without a comparable component in the current rules. It would require local program staff to refer a case back to the court if they receive information indicating that the defendant is unable to pay the assessed costs, fines and fees without undue hardship to the defendant and defendant's dependents. This component also provides that a defendant is presumed to be unable to pay all the costs, fees, and fines assessed if the defendant meets at least one of the following three criteria: 1) the defendant is required to attend school pursuant to the compulsory school attendance law, 2) the defendant's income or defendant's household income does not exceed 125 percent of the applicable income level established by the federal poverty guidelines, and 3) the defendant qualifies for certain federal assistance programs. The proposed rule also requires local program staff to collect information regarding a defendant's ability to satisfy the assessment with non-monetary compliance options (i.e. community service, etc.) and to provide the court with this information when the case is referred back to the court. Though local program staff are currently able to refer cases back to the court if they believe a defendant is unable to pay and are able to collect information regarding available non-monetary compliance options, there is no comparable provision specifically stated in the current rule. The proposed rule also specifies that it is not intended to discourage staff from referring other cases back to the court even if the defendant does not specifically fall under the provided "inability to pay" presumption, and it also provides that it is not intended to bind or influence judicial discretion regarding these matters.

4) Payment Plan Guidelines. The current rule contains a subsection (§175.3(c)(4)) called "Specified Payment Terms" that includes documentation requirements, payment guidelines and time requirements. The proposed rules substitute the "Specified Payment Terms" subsection with a new "Payment Plan Guidelines" subsection. None of the provisions in the current "Specified Payment Terms" subsection are included in the new "Payment Plan Guidelines" subsection except for the requirement that payment plans be documented. The new rule requires that payment plans include payment amounts, the designated payment intervals and the number of payments and provides that, generally, payment amounts should not exceed 20 percent of the defendant's discretionary income per month.

5) Telephone and Written Notice Contact. The proposed rule adds e-mail and other electronic communication options as a means to communicate with defendants. It also requires local program staff to include instructions in their telephone and written contacts about what a defendant can do if the defen-

dant is unable to pay and information regarding the availability of non-monetary compliance and how a defendant can request a hearing for the judge to consider the defendant's ability to pay.

6) Final Contact Attempt. The proposed rule replaces the "Contact if Capias Pro Fine Sought" subsection with a subsection called "Final Contact Attempt." The new provision would require that before reporting the case as non-compliant to the court, the local program make a final contact in writing by mail. The final contact must include all of the information included in the telephone and other written contacts regarding steps a defendant can take if defendant is unable to pay. The proposed rule provides that local program staff must wait a month before reporting the case to the court in order to give the defendant time to discuss options with local program staff. It also clarifies that the provision is not intended to interfere or alter the judge's authority to adjudicate a case for non-compliance at any time.

§175.4. Content and Form of Local Government Reports.

The proposed rule would require counties subject to these rules to provide another report to the Office of Court Administration (OCA) than is currently required - the number of cases in which local program staff refer cases back to the court under the proposed new provision that requires local program staff to refer the case if they determine that the defendant is unable to pay.

§175.5. Compliance Review Standards.

The proposed rule would change the name of §175.5 from "Audit Standards" to "Compliance Review Standards." The purpose is to remove the impression that the audits OCA conducts are to review matters related to how much money an entity collects and more closely follow the intent of Code of Criminal Procedure Art. 103.0033(j) which requires that OCA conduct an audit to confirm that the county or municipality is conforming with requirements relating to the Program.

§175.6. Implementation Schedule.

The proposed rule does not include the current §175.6 regarding local program implementation schedules published by OCA because they are no longer necessary.

§175.7 Waivers.

The only change to the current rule is the addition of the statutory requirement (Code of Criminal Procedure Art. 103.0033(h-1)) that OCA grant a blanket waiver to a county that contains within its borders a correctional facility operated by or under a contract with the Texas Department of Criminal Justice and that has a population of 50,000 or more because the inmate population is included in the county's population.

Fiscal Note

Jennifer Henry, OCA's chief financial officer, does not anticipate that for the first five-year period the new rules and repeals are in effect that the fiscal implications for state government, if any, will be significant. There may be a fiscal impact to local government for the cost of any new forms that may need to be developed, for the reconfiguration of any notification systems currently in place, and for programming that may be required to add the additional reporting requirement. The actual cost of complying with the new rules will vary depending on counties' and municipalities' current operations and systems. However, OCA does not anticipate that the cost will be significant.

Public Benefit and Economic Impact

Scott Griffith, director of research and court services of OCA, has determined that for each year of the first five years the new rules and repeals are in effect, the public benefit anticipated as a result of the proposed rules will be clarification of the intent and meaning of the Program's requirements and the ability of defendants who are unable to pay court ordered costs, fines and fees at the time they are assessed to establish a payment plan so that they can comply with court orders without undue hardship to themselves and their dependents.

There are no anticipated economic costs to persons who are required to comply with the rules as proposed. There are no anticipated costs to small business and there is no anticipated impact on local employment.

Comments

Comments on the proposed new rules and repeals may be submitted in writing to Scott Griffith at scott.griffith@txcourts.gov, at P.O. Box 12066, Austin, Texas 78711-2066, or at fax number (512) 463-1648. Comments will be accepted for 30 days following the publication of the proposal in the *Texas Register*.

1 TAC §§175.1 - 175.6

Statutory Authority

New Chapter 175 is proposed under §71.019 of the Texas Government Code, which authorizes the Council to adopt rules expedient for the administration of its functions. The statutory provision for the proposed rules is Article 103.0033 of the Code of Criminal Procedure.

No other statutes, articles, or codes are affected by the proposed new rules.

§175.1. Purpose and Scope.

(a) The purpose of this rule is to provide notice to counties and municipalities of the scope and components of the Collection Improvement Program (CIP) model developed by the Office of Court Administration pursuant to Article 103.0033 of the Code of Criminal Procedure and the standards that will be used to determine whether a county or municipality is complying with the CIP requirements.

(b) The CIP is designed to improve a defendant's compliance with the payment of costs, fees, and fines that have been ordered by a court, without imposing an undue hardship on the defendant or the defendant's dependents. The CIP components should not be interpreted to conflict with or undermine the provision to defendants of full procedural and substantive rights under the constitution and laws of this state and of the United States.

(c) The CIP does not alter a judge's legal authority or discretion to design payment plans of any amount or length of time; to convert costs, fees, and fines into community service or other non-monetary compliance options as prescribed by law; to waive costs, fees, and fines; or to reduce the total amount a defendant owes at any time after the assessment date; or to adjudicate a case for non-compliance at any time.

(d) The CIP applies to criminal cases in which the defendant is ordered to pay costs, fees, and fines under a payment plan. The CIP does not apply to cases in which: 1) the court has determined that the defendant is unable to pay any portion of the costs, fees, and fines without undue hardship to the defendant or the defendant's dependents; 2) the court, at the time of assessment, authorizes discharge of the costs, fees, and fines through non-monetary compliance options; or 3) the defendant has been placed on deferred disposition or has elected to take a driving safety course.

(e) Although cases in which the court has ordered a defendant to satisfy his or her obligation regarding costs, fees, and fines through community service or other non-monetary compliance options are not subject to the CIP requirements, a judge may use local program staff to assist the court with monitoring a defendant's compliance with these court orders.

§175.2. Definitions.

(a) "Assessment date" is the date on which a defendant is ordered or otherwise obligated to pay costs, fees, and fines. When a defendant remits partial payment of a citation without appearing in person, the assessment date is the date the partial payment is received.

(b) "Collection Improvement Program" or "CIP" means the program described in this chapter.

(c) "Contact information" means the defendant's home address and home or primary contact telephone number, and email address, if any; at least two personal contacts and their telephone number, mailing address or email address; and the date the information is obtained.

(d) "Discretionary income" means the amount of a defendant's net (after-tax) household income minus the amount of all required payments and the cost of items that are essential for the defendant and the defendant's dependents. Required payments are those which would result in a penalty or other adverse impact if payment is not made, including, but not limited to, loan, credit card, and car and health insurance payments; court mandated payments, such as child support and victim restitution payments; and fees for drug testing, rehabilitation programs, and community supervision. Items that are essential for the defendant and the defendant's dependents are those which are necessary to ensure the well-being of the defendant and defendant's dependents, including, but not limited to, transportation, food, medicine and medical services or supplies, housing, child care, and clothing.

(e) "Household income" means the defendant's income and the defendant's spouse's income that is available to the defendant.

(f) "Jurisdiction" means a county or municipality that is subject to this chapter.

(g) "Local program" means a program implemented by a jurisdiction pursuant to Art. 103.0033 of the Code of Criminal Procedure.

(h) "Non-monetary compliance option" means an alternative method of satisfying the assessment of costs, fees, and fines other than through the payment of money. This includes those methods provided in Arts. 43.09 and 45.049 of the Code of Criminal Procedure, and any other alternative within the judge's discretion.

(i) "OCA" means the Office of Court Administration of the Texas Judicial System.

(j) "Payment ability information" means the defendant's household income, expenses, account balances in financial institutions, debt balances and payment amounts, number of dependents, and any other information necessary to calculate the defendant's discretionary income. The payment ability information provided by the defendant to local program staff is presumed to be current unless the defendant notifies the court or local program staff that resources or circumstances have changed and a review is requested.

(k) "Payment plan" means a schedule of one or more payment(s) to be made at designated interval(s) by the defendant who does not pay all costs, fees, and fines at the time they are assessed and payment is requested. A judge's order that payment of costs, fees, and fines is due at a future date constitutes a payment plan regardless of whether the order requires one payment in full or several payments at designated intervals.

(l) "Spouse" means the person to whom the defendant is married, including a person who is a party to an informal marriage.

§175.3. Collection Improvement Program Components.

(a) Components for Local Program Operations.

(1) Dedicated Local Program Staff. Each program must designate at least one employee whose job description contains an essential job function of CIP program activities. The local program activities may be assigned to one individual employee or distributed among two or more employees. The local program activities need not require 40 hours per week of an employee's time, but must be a priority.

(2) Payment Plan Compliance Monitoring. Local program staff must monitor the defendants' compliance with the terms of their payment plans and document the ongoing monitoring by either an updated payment due list or a manual or electronic tickler system.

(3) Application or Contact Information.

(A) Payment Plans Set by Judge Prior to Referral to the Local Program. If the judge has established a payment plan for the defendant prior to referring the case to the local program, local program staff must obtain from the defendant a statement on a form provided by local program staff whether the defendant has the ability to pay the costs, fees, and fines under the payment plan terms ordered by the judge without financial hardship to the defendant or the defendant's dependents. If the defendant states that the defendant has the ability to pay without undue hardship to the defendant and the defendant's dependents, the defendant must provide contact information and local program staff must document it. If the defendant does not state that the defendant has the ability to pay without undue hardship, local program staff must also collect payment ability information from the defendant. All required statements, contact information documentation, and payment ability information must be signed and obtained within one month of the assessment date.

(B) Other Cases. For all other cases, the local program must collect from the defendant a signed application for a payment plan that includes both contact information and payment ability information. The required information must be obtained within one month of the assessment date.

(4) Verification of Contact Information. Within five days of receiving the contact information, local program staff must verify both the home and primary contact telephone number. Verification may be conducted by reviewing written proof of the contact information, by telephoning the personal contacts, or by using a verification service. Verification must be documented by identifying the person conducting it and the date of the verification.

(5) Defendant Interviews.

(A) Within 14 days of receiving an application or receiving a case in which the judge has set a payment plan before referring the case to the program and the defendant has indicated that the defendant does not have the ability to pay the costs, fees, and fines under the payment plan terms ordered by the judge without undue hardship to the defendant or the defendant's dependents, local program staff must conduct an in-person or telephone interview with the defendant to review payment ability information. Interviews must be documented by indicating the name of the interviewer and date of the interview.

(B) Within 14 days of receiving a case in which the judge has set a payment plan before referring the case to the program and the defendant has indicated that the defendant has the ability to pay the costs, fees, and fines under the payment plan terms ordered by the judge without undue hardship to the defendant or the defendant's dependents, local program staff must conduct an in-person or telephone

interview with the defendant to review the terms of the payment plan set by the judge. Interviews must be documented by indicating the name of the interviewer and date of the interview.

(6) Referral to Court for Review of Defendant's Ability to Pay.

(A) Referral to Court. If a defendant interview or other information collected by local program staff indicates that the defendant may be unable to pay the costs, fees, and fines assessed by the judge without undue hardship to the defendant or the defendant's dependents, or that the defendant may be unable to pay the costs, fees, and fines assessed by the judge within the time period ordered by the court without undue hardship to the defendant or the defendant's dependents, local program staff must refer the case to the court for the judge to determine if appropriate non-monetary compliance options or waiver or partial waiver of costs, fees or fines are appropriate.

(B) Presumption of Inability to Pay. For purposes of local program staff determining whether a defendant's case needs to be referred back to the court under subparagraph (A) of this paragraph, a defendant is presumed to be unable to pay any portion of the costs, fees, and fines assessed by the judge without undue hardship to the defendant or the defendant's dependents if:

(i) the defendant is required to attend school pursuant to the compulsory school attendance law in Sec. 25.085 of the Texas Education Code;

(ii) the defendant's household income does not exceed 125 percent of the applicable income level established by the federal poverty guidelines; or

(iii) the defendant or the defendant's dependent receives assistance under the following:

(I) a food stamp program or the financial assistance program established under Chapter 31, Human Resources Code;

(II) the federal special supplemental nutrition program for women, infants, and children authorized by 42 U.S.C. Section 1786;

(III) the medical assistance program under Chapter 32, Human Resources Code; or

(IV) the child health plan program under Chapter 62, Health and Safety Code.

(C) Other Cases. Local program staff may refer to the court cases in which the defendant is not presumed to be unable to pay under subparagraph (B) of this paragraph but that local program staff have received information indicating that the defendant may not have the ability to pay the costs, fees, and fines assessed by the judge without undue hardship to the defendant or the defendant's dependents or may be unable to pay the costs, fees, and fines assessed by the judge within the time period ordered by the court without undue hardship to the defendant or the defendant's dependents.

(D) Information Regarding Non-Monetary Compliance Options. If local program staff determines that a case must be referred to the court under subparagraph (A) of this paragraph, local program staff should collect and provide to the court information regarding non-monetary compliance options that may be available, if any, that may enable the defendant to discharge all or part of the defendant's costs, fees, and fines.

(E) Judicial Discretion. None of these provisions should bind judges or influence judicial discretion regarding the determinations of whether to waive or reduce costs, fees, and fines for any defendant; to impose non-monetary compliance options to

satisfy costs, fees or fines; or the assessment of costs, fees or fines, sentencing, or other disposition decisions.

(7) Payment Plans.

(A) Documentation. Payment plans must be documented by notation in the judgment or court order, on a docket sheet, by written or electronic record, or by other means enabling later review.

(B) Payment Guidelines. The following are guidelines for local program staff to use in cases referred to the local program by the court for review and establishment of appropriate payment terms based on the defendant's ability to pay. A judge is not required to follow these guidelines in setting a payment plan.

(i) Payment plans should include the payment amount, the designated interval, and the number of payments that the defendant will make to pay the defendant's court-ordered costs, fees, and fines.

(ii) Generally, payment plans should not require the defendant to pay more than 20 percent of the defendant's discretionary income per month.

(8) Telephone Contact for Past-Due Payments. Within one month of a missed payment, a telephone call must be made to the defendant who has not contacted local program staff. In every telephone contact for past due payment, local program staff must provide the defendant with instructions about what to do if the defendant is unable to make payments. This telephone contact must also include information about the availability of non-monetary compliance options and how the defendant may request a hearing for the judge to consider the defendant's ability to pay and options available for the defendant to satisfy the judgment. Telephone calls may be made by an automated system, but an electronic report or manual documentation of the telephone contact must be available on request.

(9) Written Notice for Past-Due Payments. Within one month of a missed payment, a written notice must be sent to the defendant who has not contacted the local program. Written notice may be made by regular or certified mail, e-mail, text message or other electronic means. Every written notice for past due payment must provide the defendant with instructions about what to do if the defendant is unable to make payments. The written notice must also include information about the availability of non-monetary compliance options and how the defendant may request a hearing for the judge to consider the defendant's ability to pay and options available for the defendant to satisfy the judgment. Written notice may be sent by an automated system, but an electronic report or manual documentation of the written notice must be available on request.

(10) Final Contact Attempt. Local program staff must send a final written notice by regular or certified mail to the defendant within one month of the written notice described in paragraph (9) of this subsection prior to reporting the case to the court as non-compliant. The written notice must include the same information required in paragraph (9) of this subsection and include reasonable steps the defendant can take to avoid the defendant's case being reported to the court as non-compliant. The written notice must also notify the defendant of the defendant's right to avoid jail time for nonpayment if the defendant is unable to pay the amount owed without undue hardship to the defendant and the defendant's dependents. An electronic report or manual documentation of the written notice must be available on request. The local program should not report the case back to the court as non-compliant until at least one month after the final contact attempt to provide the defendant time to discuss with local program staff new payment plan terms or alternative non-monetary compliance options

for the court to consider. This paragraph does not interfere or alter the judge's authority to adjudicate a case for non-compliance at any time.

(11) Delinquent Cases. Each local program must have a component designed to improve collection of balances more than 60 days past due.

(12) Proper Reporting. The local program must report its collection activity data to OCA at least annually in a format approved by OCA, as described in §175.4.

(b) Exceptions to Defendant Communications Rules. Exceptions to the defendant communications rules described in this subsection are limited to those cases in which timely access to the defendant in order to obtain the required application or contact information is not possible, and efforts to obtain an application or contact information are documented, as provided in paragraphs (1) and (2) of this subsection.

(1) Attempt to Obtain Application or Contact Information. An attempt to obtain an application or contact information described in subsection (a)(3) of this section is made either by mailing an application or contact information form or by obtaining the information via the telephone within one week of the assessment date. An electronic report or manual documentation of the attempt must be available on request. Should the defendant not return a completed application or contact information form and the post office not return the application or contact information form as undeliverable, the local program must make a second attempt to contact the defendant with any existing available information within one month of the first attempt. An electronic report or manual documentation of the second attempt must be made available on request.

(2) Application or Contact Information Is Obtained. Should a completed application or contact information form be returned to the local program by the defendant as the result of an attempt described in paragraph (1) of this subsection, it will be considered timely and all other communication timing requirements described in subsection (a)(4) and (5) of this section are based on the date the local program receives the application or contact information form.

(c) Computation of Time. In computing any period of time under these rules, when the last day of the period falls on a Saturday, Sunday, legal holiday, or other day on which the office is not open for business, then the period runs until the end of the next day on which the office is open for business.

§175.4. Content and Form of Local Government Reports.

(a) General Scope. Article 103.0033(i) of the Code of Criminal Procedure requires that each local program submit a written report to OCA at least annually that includes updated information regarding the local program, with the content and form to be determined by OCA. Reporting under Art. 103.0033 of the Code of Criminal Procedure and this chapter is not the same as reporting of judicial statistics under Sec. 71.035 of the Government Code and different rules for reporting and waiver apply.

(b) Reporting Format and Account Setup. OCA has implemented a web-based Online Collection Reporting System for local programs or jurisdictions to enter information into the system. For good cause shown by a jurisdiction, OCA may grant a temporary waiver from timely online reporting. Local program participants or jurisdictions must provide OCA with information for the online reporting system to enable OCA to establish the local program reporting system account. The information must include the local program name, program start date, start-up costs, the type of collection and case management software programs used by the local program, the entity to which the local program reports (e.g., judge, district clerk's office, sheriff, etc.), the name and title of the person who manages the daily operations of

the local program, the mail and e-mail addresses and telephone and fax numbers of the local program, the courts serviced by the local program, and contact information for the local program staff with access to the system so user identifications and passwords can be assigned.

(c) Content and Timing of Reports.

(1) Annual Report. By the 60th day following the fiscal year end, each local program or jurisdiction must report the following information:

(A) Number of full-time and part-time local program employees;

(B) Total local program expenditures;

(C) Salary expenditures for the local program;

(D) Fringe benefit expenditures for the local program;

(E) Areas other than court collections for which the local program provides services;

(F) Local and contract jail statistics and average cost per day to house a defendant; and

(G) A compilation of 12 months of the monthly reporting information described in paragraph (3) of this subsection, if not reported each month as requested.

(2) Monthly Reports. By the 20th day of the following month, each local program or jurisdiction is requested to provide the following information regarding the previous month's local program activities:

(A) Number of cases in which costs, fees, and fines were assessed;

(B) Number of cases in which local program staff referred the case to the court under §175.3(a)(6) for review of the defendant's ability to pay;

(C) For assessed court costs and fees: the dollar amount assessed and collected; the dollar amount of credit given for jail time served; the dollar amount of credit given for community service performed or other non-monetary compliance options; the dollar amount waived because of the defendant's inability to pay, and the dollar amount waived for reasons other than the defendant's inability to pay;

(D) For fines: the dollar amount assessed, collected, or waived; the dollar amount of credit given for jail time served; and the dollar amount of credit given for community service performed or other non-monetary compliance options; and

(E) Aging information consisting of the time span from date of assessment through the date of payment, in 30-day increments up to 120 days, and for more than 120 days.

§175.5. Compliance Review Standards.

(a) Statutory Basis. In accordance with Art. 103.0033(j) of the Code of Criminal Procedure, OCA must periodically review local jurisdictions' compliance with the components described in §175.3(a).

(b) Cases Eligible for Compliance Review. For purposes of this section, "eligible case" means a criminal case in which a judgment has been entered by a trial court. The term does not include cases in which: 1) the court has determined that the defendant is unable to pay any portion of the costs, fees, and fines without undue hardship to the defendant or the defendant's dependents; 2) the court, at the time of assessment, authorizes discharge of the costs, fees, and fines through non-monetary compliance options; 3) the defendant has been placed

on deferred disposition or has elected to take a driving safety course; or 4) the defendant is incarcerated, unless the defendant is released and payment is requested.

(c) Compliance Review Methods. OCA must use random selection to generate an adequate sample of eligible cases to be reviewed, and must use the same sampling methodology as used for local programs with similar automation capabilities.

(d) Compliance Review Standards. OCA must use the following standards in the compliance review:

(1) Standards for Components in §175.3(a)(1), (2), (11), and (12). A county is in compliance with these components when either 90% of all courts in the county, or all courts in the county except one court, have satisfied all four requirements. Partial percentages are rounded in favor of the county. A municipality must satisfy all four requirements in order to be in compliance.

(2) Standards for Components in §175.3(a)(3) - (10). A jurisdiction is in substantial compliance with a component when at least 80% of the eligible cases at that stage of collection have satisfied the requirements of the component. A jurisdiction is in partial compliance with a component when at least 50% of the eligible cases at that stage of collection have satisfied the requirements of the component. In order for a jurisdiction to be in compliance with these components, the jurisdiction cannot be in less than partial compliance with any component, may be in partial compliance with a maximum of one component, and must be in substantial compliance with all of the other applicable components.

§175.6. Waivers.

(a) Statutory Basis. Article 103.0033 of the Code of Criminal Procedure provides that OCA may determine that it is not cost-effective to implement a local program in a county or municipality and grant a waiver to the requesting entity.

(b) Criteria for Granting Waivers. OCA will grant a blanket waiver from implementation when the requesting entity demonstrates that:

(1) The estimated costs of implementing the local program are greater than the estimated additional revenue that would be generated by implementing the local program, and a compelling reason exists for submitting the waiver request after the entity's implementation deadline. The requesting jurisdiction and CIP staff must each submit documentation supporting the cost and revenue projections to the Administrative Director of OCA for determination; or

(2) The county contains within its borders a correctional facility operated by or under contract with the Texas Department of Criminal Justice; and has a population of 50,000 or more only because the inmate population of all correctional facilities is included in that population.

(c) Temporary Waivers. OCA will consider a request to grant a temporary waiver for good cause that could not have been reasonably anticipated. Such temporary waivers may be granted after a compliance review to allow a local program to correct deficiencies discovered during the compliance review.

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 17, 2016.

TRD-201603112

Maria Elena Ramon
General Counsel
Texas Judicial Council
Earliest possible date of adoption: July 31, 2016
For further information, please call: (512) 463-1682



SUBCHAPTER A. GENERAL COLLECTION IMPROVEMENT PROGRAM PROVISIONS

1 TAC §§175.1 - 175.5

Statutory Authority

The repeals are proposed under §71.019 of the Texas Government Code, which authorizes the Council to adopt rules expedient for the administration of its functions. The statutory provision for the proposed repeals is Article 103.0033 of the Code of Criminal Procedure.

No other statutes, articles, or codes are affected by the proposed repeals.

§175.1. *Source, Purpose and Scope.*

§175.2. *Definitions.*

§175.3. *Collection Improvement Program Components.*

§175.4. *Content and Form of Local Government Reports.*

§175.5. *Audit Standards.*

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 17, 2016.
TRD-201603111
Maria Elena Ramon
General Counsel
Texas Judicial Council
Earliest possible date of adoption: July 31, 2016
For further information, please call: (512) 463-1682



SUBCHAPTER B. IMPLEMENTATION SCHEDULE AND WAIVERS

1 TAC §175.6, §175.7

Statutory Authority

The repeals are proposed under §71.019 of the Texas Government Code, which authorizes the Council to adopt rules expedient for the administration of its functions. The statutory provision for the proposed repeals is Article 103.0033 of the Code of Criminal Procedure.

No other statutes, articles, or codes are affected by the proposed repeals.

§175.6. *Implementation Schedule.*

§175.7. *Waivers.*

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 17, 2016.

TRD-201603113
Maria Elena Ramon
General Counsel
Texas Judicial Council
Earliest possible date of adoption: July 31, 2016
For further information, please call: (512) 463-1682



TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §115.19

The Texas State Securities Board proposes an amendment to §115.19, concerning Texas crowdfunding portal registration and activities. Subsection (c)(3) would be amended to permit a registered portal to handle investor funds if the funds are held in a segregated account pursuant to a corresponding amendment to §139.25(f), which is being concurrently proposed.

When a portal maintains a segregated account, it must make certain disclosures to investors. These disclosures are not required of general dealers who use segregated accounts in connection with crowdfunding offerings since an equivalent disclosure provision would not be included in §139.25. Additionally, subsection (e) of §115.19 would be amended to add mandatory recordkeeping requirements when a segregated account is used by a portal. The more comprehensive recordkeeping rule (§115.5) applicable to general dealers already requires a general dealer to keep these records.

Clint Edgar, Director, Registration Division, has determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Edgar 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 to allow Texas crowdfunding portals to handle investor funds for certain small securities offerings where engaging an escrow agent may be difficult or cost prohibitive. There will be no effect on micro- or small businesses. Since the rule will have no adverse economic effect on micro- or small businesses, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to

adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Articles 581-12, 581-13, 581-14, 581-15, and 581-18.

§115.19. *Texas Crowdfunding Portal Registration and Activities.*

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

(c) Prohibited activities. A Texas crowdfunding portal shall not:

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

(3) hold, manage, possess or otherwise handle investor funds or securities, except through the use of a segregated account if permitted under §139.25(f) of this title (relating to Intrastate Crowdfunding Exemption). When a segregated account is used to hold investor payments, the portal must disclose this to prospective purchasers and investors along with a statement that the portal, in administering the segregated account, must:

(A) be responsible for the prudent processing, safeguarding, and accounting for funds entrusted to the portal by the investors and the issuer;

(B) act to the advantage of and in the best interests of the investors and the issuer; and

(C) ensure that all requirements of the Account Agreement between the portal and the issuer are met before funds are disbursed from the segregated account;

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

(d) (No change.)

(e) Recordkeeping.

(1) (No change.)

(2) A portal shall maintain and preserve for a period of five (5) years from either the date of the document or communication or the date of the closing or termination of the securities offering, whichever is later, the following records related to offers and sales made through the Internet website and to transactions where the portal receives compensation:

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

(C) any agreements and/or contracts between the portal and an issuer, prospective purchaser, [ø] investor, bank or other depository institution;

(D) - (G) (No change.)

(H) ledgers (or other records) that reflect all assets and liabilities, income and expense, [and] capital accounts, and escrow or segregated accounts; and

(I) (No change.)

(3) - (7) (No change.)

(f) (No change.)

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

Filed with the Office of the Secretary of State on June 15, 2016.

TRD-201603031

John Morgan

Securities Commissioner

State Securities Board

Earliest possible date of adoption: July 31, 2016

For further information, please call: (512) 305-8301



CHAPTER 139. EXEMPTIONS BY RULE OR ORDER

7 TAC §139.25

The Texas State Securities Board proposes an amendment to §139.25, concerning intrastate crowdfunding exemption. Subsection (f) would be amended to permit a segregated account to be used in lieu of an escrow account when the maximum offering amount in a crowdfunding offering is \$100,000 or less. Definitions for "escrow account" and "segregated account" are included as well as requirements for how registered dealers or crowdfunding portals would handle the funds in the segregated accounts. If a portal is involved in the segregated account, additional disclosure statements would be mandated by an amendment to §115.19(c)(3), which is being concurrently proposed.

When a segregated account is created in connection with a securities offering, the proposed amendment to subsection (j) would require the issuer to file with the Securities Commissioner a copy of the written agreement between it and the dealer or portal that governs the segregated account. This filing would occur when the issuer makes its other notice filings to claim the exemption. The agreement defines the responsibilities of the parties with respect to the segregated account. It must identify the bank or other depository institution where the funds will be held and provide the account number. All authorized signatories on the segregated account must be persons registered with the Securities Commissioner.

The funds in the segregated account must be separate from any other account used by the dealer or portal. To prohibit commingling of funds from different offerings or other monies, a separate segregated account must be set up for each securities offering in which such an account is used. Guidance on the recordkeeping requirements for segregated accounts will be added to the agency's website.

Clint Edgar, Director, Registration Division, has determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Edgar 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 to facilitate certain small securities offerings by businesses in the state by removing a potential obstacle to using the intrastate crowdfunding exemption. There will be no effect on micro- or small businesses. Since the rule will have no adverse economic effect on micro- or small businesses, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed sec-

tion in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under Texas Civil Statutes, Articles 581-5.T and 581-28-1. Section 5.T provides that the Board may prescribe new exemptions by rule. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Articles 581-7 and 581-14.

§139.25. Intrastate Crowdfunding Exemption.

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

(f) Escrow or segregated account to safeguard investor and issuer funds.

(1) All payments for purchases of securities offered under this section are directed to and deposited in an escrow account or a segregated account, if a segregated account is permitted under paragraph (2) of this subsection. The payments must ~~[with a bank or other depository institution located in Texas and organized and subject to regulation under the laws of the United States or under the laws of Texas, and will]~~ be held in an escrow account or a segregated account until the aggregate capital raised from all purchasers is equal to or greater than the minimum target offering amount specified in the disclosure statement as necessary to implement the business plan. Investors will receive a return of all their subscription funds if the target offering amount is not raised by the time stated in the disclosure statement.

(2) A segregated account may be used in lieu of an escrow account if the maximum offering amount is \$100,000 or less.

(3) For purposes of this subsection:

(A) An "escrow account" is one administered by an independent escrow agent who is a bank or other depository institution.

(B) A "segregated account" is one established by a registered general dealer or a Texas crowdfunding portal pursuant to a written agreement ("Account Agreement") with the issuer and provides that the registered general dealer or portal will act on behalf of the issuer and investors to hold funds raised from investors in a specific securities offering until such time as those funds can be disbursed in accordance with paragraph (1) of this subsection. The Account Agreement must identify the bank or other depository institution and account number where the funds will be held. All signatories on the segregated account must be persons registered with the Securities Commissioner.

(4) The escrow account or segregated account must be in a bank or other depository institution located in Texas and organized and subject to regulation under the laws of the United States or under the laws of Texas.

(5) A separate account must be set up for each securities offering in which a segregated account is used in lieu of an escrow account. The Account Agreement entered into in connection with a segregated account, shall include requirements that the dealer or portal must, and the account shall be administered in accordance with the following principles requiring the dealer or portal to:

(A) be responsible for prudent processing, safeguarding, and accounting for funds entrusted to it by investors and the issuer;

(B) act to the advantage of and in the best interests of the investors and the issuer; and

(C) ensure that all requirements of the Account Agreement between the portal and issuer are met before funds are disbursed from the segregated account.

(6) The issuer shall inform all prospective purchasers and investors if a segregated account is to be used to hold investor payments. Additionally, a portal must make the disclosures mandated by §115.19(c)(3).

(g) - (i) (No change.)

(j) Notice filing. Before using any publicly available Internet website in an offering of securities in reliance on this section, the issuer shall file with the Securities Commissioner:

(1) Form 133.17, Crowdfunding Exemption Notice;

(2) the disclosure statement, required by subsection (i) of this section; ~~[and]~~

(3) the summary of the offering, required by subsection (h)(2)(B) of this section; ~~and[-]~~

(4) if investor funds are to be deposited into a segregated account as permitted by subsection (f) of this section, a copy of the written Account Agreement entered into between the issuer and the registered general dealer or Texas crowdfunding portal that will hold investor funds in the securities offering.

(k) - (m) (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 15, 2016.

TRD-201603032

John Morgan

Securities Commissioner

State Securities Board

Earliest possible date of adoption: July 31, 2016

For further information, please call: (512) 305-8301



TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING

SUBCHAPTER B. TREATMENT OF HORSES

16 TAC §319.110

The Texas Racing Commission proposes an amendment to 16 TAC §319.110, Health Certificate. The section relates to health inspection requirements that must be met for a horse to be allowed to enter the premises of a licensed racetrack. The proposed amendment deletes the existing requirements relating to equine infectious anemia tests and health certificates and instead substitutes a general requirement that a horse entering an

association's grounds must be accompanied by a current certificate of veterinary inspection and also meet any other health inspection requirements established by the Texas Animal Health Commission (TAHC). The change will allow the Texas Racing Commission to follow the requirements of the TAHC without requiring a rule amendment each time TAHC changes its rules. Consistent with the substantive change in the rule, the Commission proposes to broaden the rule's title to reflect that it addresses more than just health certificates.

Chuck Trout, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for local or state government as a result of enforcing the amended rule.

Mr. Trout has determined that for each year of the first five years that the amended rule is in effect the anticipated public benefit will be to ensure that horse health inspection standards at the racetracks are consistent with TAHC's statewide standards.

The amendment will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendment.

The amendment will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Mary Welch, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendment is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act, and §6.061, which requires the Commission to adopt rules addressing the safety of conditions on a racetrack.

The amendment implements Texas Revised Civil Statutes Annotated, Article 179e.

§319.110. *Requirements to Enter Association Grounds [Health Certificate].*

To be admitted on to an association's grounds, a horse must be accompanied by a current certificate of veterinary inspection and meet any other health inspection requirements established by the Texas Animal Health Commission. [have:]

{(1) a current negative test for equine infectious anemia conducted in accordance with rules of the Texas Animal Health Commission; and}

{(2) a health certificate issued in the 45-day period preceding the horse's arrival.}

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 17, 2016.
TRD-201603086

Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: July 31, 2016
For further information, please call: (512) 833-6699

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS

**SUBCHAPTER KK. COMMISSIONER'S
RULES CONCERNING COMPLIANCE
INVESTIGATIONS IN CONNECTION WITH
STATE-FUNDED EDUCATION PROGRAM
GRANTS**

19 TAC §102.1401

The Texas Education Agency (TEA) proposes new §102.1401, concerning educational programs. The proposed new section would establish provisions for TEA compliance investigations in connection with state education grant programs.

TEA currently lacks an explicit rule framework for state education grant compliance investigations, corrective actions, and sanctions. Given sufficient statutory authority to adopt rules in this area and in order to ensure fiscal responsibility in connection with state grant funds and appropriate implementation of state grant program requirements, the TEA proposes new 19 TAC §102.1401, Compliance Investigations. The new section would outline the framework for compliance investigations, corrective actions, and sanctions the TEA may initiate for recipients of state education program grant funds to ensure taxpayer dollars are being spent appropriately and prevent fraud, waste, and abuse.

The proposed new section would require cooperation by state grant recipients, including the submission of required documentation and information, with ongoing compliance investigations.

The proposed new section would indirectly necessitate via compliance investigations that school districts and charter schools maintain documentation of compliance with existing state grant requirements as prescribed by the TEA through requests for application for state grants.

FISCAL NOTE. Von Byer, general counsel, has determined that for the first five-year period the new section is in effect there are no additional costs for state or local government as a result of enforcing or administering the new section. There is no effect on local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. Mr. Byer 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 ensuring fiscal responsibility in connection with state grant funds and appropriate implementation of state grant program requirements. 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 July 1, 2016, and ends August 1, 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 July 1, 2016.

STATUTORY AUTHORITY. The new section is proposed under the Texas Education Code (TEC), §7.028(a)(2), which authorizes the agency to monitor compliance with state grant requirements, and §39.056(a), which authorizes the commissioner to direct the agency to conduct monitoring reviews and random on-site visits of a school district or charter school as authorized by TEC, §7.028.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §7.028(a)(2) and §39.056(a).

§102.1401. Compliance Investigations.

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

(1) Compliance investigation--An investigation by the Texas Education Agency (TEA) of a state education grant recipient to determine compliance with the statutory or rule requirements of a state education program. A compliance investigation is not a special accreditation investigation subject to the provisions of Texas Education Code (TEC), §39.057 and §39.058.

(2) Corrective action--An action required by the TEA, after issuance of a final compliance investigation report, of a state education grant recipient to remove an Out-of-Compliance Status, which may include, but is not limited to, the following:

(A) refunding of a portion of grant funds by the state education grant recipient to the TEA in an amount determined by the TEA to the extent the state education grant recipient failed to meet the requirements of a state education grant provision; and

(B) addressing the state education grant recipient's failure to meet the requirements of a state education grant provision.

(3) Out-of-Compliance Status--A status determined by the TEA in a final compliance investigation as described in subsection (g) of this section that a state education grant recipient has not met the requirements of an applicable state education grant provision or as provided in subsection (e) of this section.

(4) State education grant--A grant of funds authorized by the State of Texas to implement a state education program.

(5) State education grant recipient--An entity that receives state education grant funds to implement a state education program.

(6) State education program--A program authorized and funded by the State of Texas to facilitate the education of children.

(b) The TEA may initiate a compliance investigation at its discretion or upon receipt of a complaint from a person or entity other than the TEA.

(c) The TEA may undertake a compliance investigation on site, as a desk review, or as a combination of both.

(d) The TEA shall provide written notice to a state education grant recipient of an impending compliance investigation.

(e) The refusal of a state education grant recipient to cooperate with a compliance investigation may result in the assignment of an Out-of-Compliance Status by the TEA to the state education grant recipient. An Out-of-Compliance Status assigned due to lack of cooperation with a compliance investigation may be removed at the TEA's discretion upon its determination that a state education grant recipient has provided the information the TEA requested.

(f) Pursuant to §157.1121(6) of this title (relating to Applicability), a compliance investigation is subject to the procedures set out in Chapter 157, Subchapter EE, of this title (relating to Informal Review, Formal Review, and Review by State Office of Administrative Hearings). A final compliance investigation report and/or corrective action is not subject to further appeal, including any appeal otherwise available under TEC, §7.057.

(g) The TEA will provide any final compliance investigation report and/or corrective action plan to the superintendent/chief executive officer and the governing board of the state education grant recipient that is the subject of such final compliance investigation report, along with any recommendations of the TEA regarding any necessary improvements or sources of aid.

(h) Upon receipt of additional information from the state education grant recipient regarding completion of its corrective action plan, the TEA will review the information. If the information demonstrates completion or substantial completion of the corrective action plan, the TEA will remove the Out-of-Compliance Status and notify the state education grant recipient of the removal of the Out-of-Compliance Status.

(i) An Out-of-Compliance Status may bar the receipt of future discretionary state education grant funds and may disqualify future discretionary state education grant applications.

(j) The commissioner may, at the commissioner's discretion, waive the effects of an Out-of-Compliance Status.

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 20, 2016.

TRD-201603116

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency

Earliest possible date of adoption: July 31, 2016

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

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**PART 7. STATE BOARD FOR
EDUCATOR CERTIFICATION**

**CHAPTER 227. PROVISIONS FOR EDUCATOR
PREPARATION CANDIDATES**

SUBCHAPTER A. ADMISSION TO EDUCATOR PREPARATION PROGRAMS

19 TAC §§227.1, 227.5, 227.10, 227.15, 227.17, 227.19, 227.20

The State Board for Educator Certification (SBEC) proposes amendments to 19 TAC §§227.1, 227.5, 227.10, 227.15, 227.17, 227.19, and 227.20, concerning provisions for educator preparation candidates. The sections establish requirements for admission to an educator preparation program (EPP). The proposed amendments to 19 TAC §§227.1, 227.5, 227.10, 227.15, 227.17, 227.19, and 227.20 would include changes to provide clarification to questions that Texas Education Agency (TEA) staff has received from EPPs and applicants to EPPs. In addition, the proposed amendments would clarify minimum standards for all EPPs, allow for flexibility, and ensure consistency among EPPs in the state.

The Texas Education Code (TEC), §21.031, states that the SBEC is established to oversee all aspects of the certification and continuing education of public school educators and to ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state. The TEC, §21.049, authorizes the SBEC to adopt rules providing for educator certification programs as an alternative to traditional EPPs. The proposed amendments would include changes to provide clarification to questions that TEA staff has received from EPPs and applicants to EPPs after revisions to the chapter were adopted by the SBEC in December 2015.

General Provisions

In accordance with the TEC, §21.044, language to require EPPs to provide information regarding the performance over time of the EPP was added to 19 TAC §227.1(c) in December 2015. After the adoption of the amendment, EPPs asked how many years of performance data needed to be provided. The SBEC proposes adding language that would specify five years of performance data to be provided by EPPs to clarify the new standard and ensure consistency among EPPs in the state.

Definitions

After the definition of *applicant* was added to 19 TAC §227.5 in the December 2015 adoption, EPPs asked for clarification on this definition. The SBEC proposes that the definition of *applicant* be amended to clarify that an applicant is an individual seeking admission to an EPP for "any class of certificate." This proposed amendment would clarify the definition and ensure consistency among EPPs in the state.

The SBEC proposes that the definition of *candidate* in 19 TAC §227.5 be amended to align the definition with the same definition that will be proposed at a later time in 19 TAC Chapters 228, 229, and 230. The SBEC also proposes that the definitions for *certification category* and *certification class* be added in 19 TAC §227.5 so that the definitions align with the language used in 19 TAC Chapter 230, Professional Educator Preparation and Certification, Subchapter D, Types and Classes of Certificates Issued, and 19 TAC Chapter 233, Categories of Classroom Teaching Certificates. The definitions would include "also known as certification field" so that the common term for categories and classes can continue to be used by TEA staff and EPPs. To align the definitions across all chapters, the SBEC

proposes that these changes be made in 19 TAC §227.5 with conforming changes made throughout the chapter.

In accordance with the TEC, §21.0441, language to require an applicant to an EPP to pass an appropriate content matter examination to be eligible for an exception to the minimum GPA requirement was added to 19 TAC §227.5 in December 2015. After the adoption of the amendment, EPPs asked for clarification regarding the difference between a content matter examination and a content certification examination. The SBEC proposes that a definition for *content certification examination* be added to this section so that the term can be used in the appropriate sections of this chapter. The proposed definition would also align with the definition used in other chapters of the TAC.

After the definition of *contingency admission* was amended in 19 TAC §227.5 in the December 2015 adoption, EPPs asked for clarification on which admission requirements needed to be met for an applicant to be considered for contingent admission. The SBEC proposes that the definition of *contingency admission* be amended to clarify that an applicant must meet all of the admission requirements specified in 19 TAC §227.10 with the exception of a pending degree being conferred.

After the definition of *post-baccalaureate program* was added to 19 TAC §227.5 in the December 2015 adoption, EPPs asked for clarification on the difference between a post-baccalaureate program at an institution of higher education (IHE) and an alternative certification program at an IHE. The SBEC proposes that the definition of *post-baccalaureate program* be amended to clarify that a post-baccalaureate program is designed for individuals who are seeking certification and an additional degree while an alternative certification program at an IHE is designed for individuals who are only seeking certification.

The SBEC proposes that the definition of *internship* be removed from 19 TAC §227.5 because this term is not used in 19 TAC Chapter 227. The remaining definitions would be renumbered as necessary.

Admission Criteria

The SBEC proposes a minor technical edit to the language in 19 TAC §227.10(a)(3) to clarify that the minimum grade point average (GPA) requirement is for admission into an EPP.

After the language in 19 TAC §227.10(a)(3)(A) was amended in the December 2015 adoption, EPPs asked for clarification on which documentation should be used to determine the admission GPA. The SBEC proposes that the language be amended to clarify that an official transcript is to be used to determine the admission GPA.

After the language in 19 TAC §227.10(a)(3)(A)(ii)(I) was added in the December 2015 adoption, EPPs asked for clarification on how an EPP should determine the admission GPA for the last 60 hours of coursework for applicants who had less than 60 semester credit hours at the IHE in which they are currently enrolled. The SBEC proposes that the language be amended to clarify that an EPP may use transcripts from previously attended IHEs to determine the admission GPA for the last 60 hours of coursework for applicants who had less than 60 semester credit hours at the IHE in which they are currently enrolled.

After the language in 19 TAC §227.10(a)(3)(A)(ii)(II) was added in the December 2015 adoption, EPPs asked for clarification on whether an EPP could use grades for coursework from an IHE that were earned after an applicant had been conferred a degree but the applicant was not currently enrolled in the IHE from which

the grades were earned. The SBEC proposes that the language be amended to clarify that an EPP may use grades from an applicant's most recent transcript to determine the admission GPA for the last 60 hours of coursework if an applicant earned grades for coursework after the applicant's most recent degree.

After the language in 19 TAC §227.10(a)(3)(B)(ii) was added in the December 2015 adoption, EPPs and applicants to programs asked for clarification on the eligibility criteria for the 10% exception to the minimum GPA requirement. The SBEC proposes that the language be amended to clarify that an applicant to a teacher preparation program must pass the appropriate content certification examination to meet the subject matter requirement of the TEC, §21.0441. The SBEC also proposes that the language be amended so that TEA staff can administratively approve requests for an applicant who has previously been enrolled in an EPP to register for a content certification examination unless the applicant is seeking to be readmitted to the EPP that had previously granted approval to attempt the content certification examination.

After the language in 19 TAC §227.10(a)(3)(B)(ii) was added in the December 2015 adoption, EPPs and applicants to programs also asked for clarification on the eligibility criteria for the 10% exception to the minimum GPA requirement as it applied to applicants for programs that lead to certification in a class other than classroom teacher. Because the SBEC does not currently have appropriate subject matter examinations for the student services, principal, and superintendent certificate classes, the SBEC proposes adding 19 TAC §227.10(a)(3)(D) to identify the GRE® (Graduate Record Examinations) revised General Test as the appropriate subject matter examination for an applicant who does not meet the minimum GPA requirement and is seeking certification in a class other than classroom teacher. TEA staff would present annual recommendations to the SBEC for passing scores that are equivalent to a 2.5 GPA for the Verbal Reasoning, Quantitative Reasoning, and Analytic Writing sections of the GRE®. The SBEC-approved scores would be published on the TEA website.

After the language in 19 TAC §227.10(a)(4)(D) was amended in the December 2015 adoption, EPPs and applicants asked for clarification on the procedures that TEA staff would use to allow an applicant who had previously enrolled in an EPP and wanted to register for a content certification examination for the purpose of admission into an EPP. The SBEC proposes that the language be amended so that TEA staff can administratively approve requests by an applicant who has previously been enrolled in an EPP to register for a content certification examination unless the applicant is seeking to be readmitted to the EPP that had previously granted approval to attempt the content certification examination.

After the language in 19 TAC §227.10(a)(5) was amended in the December 2015 adoption, EPPs asked for clarification on the requirements for an applicant to demonstrate basic skills in reading, written communication, and mathematics. The SBEC proposes that the language be amended to clarify that an applicant needs to meet the Texas Success Initiative (TSI) requirement (which is currently a passing score on the TSI Assessment offered by the College Board) or one of the exemptions, exceptions, or waivers listed in the Texas Higher Education Coordinating Board rule 19 TAC §4.54 (which includes an associate's or higher degree from an accredited IHE).

After the language in 19 TAC §227.10(a)(6) was amended in the December 2015 adoption, EPPs asked for clarification on the

English language proficiency requirement for applicants seeking career and technical education (CTE) certifications that do not require a bachelor's degree. The SBEC proposes that the language be amended to clarify that the equivalent of a high school diploma that was earned through an accredited high school in the United States can be used to meet the English language proficiency admission requirement for CTE certifications that do not require a degree from an IHE. EPPs and applicants also asked for clarification on the English language proficiency requirement for applicants to undergraduate university programs. The SBEC proposes that language be added to clarify that the English language proficiency required for admission to the IHE can be used to meet the English language proficiency admission requirement of an EPP.

The SBEC proposes that the language in 19 TAC §227.10(b) be amended to clarify that EPPs may adopt additional requirements that are not in conflict with those required in 19 TAC §227.10. Also, technical edits would be made in 19 TAC §227.10 for clarity.

Contingency Admission

The SBEC proposes that the language in 19 TAC §227.15(b) be amended to clarify that an applicant's acceptance of an offer for contingent admission to an EPP needs to be in writing.

During the public comment period of the December 2015 adoption of revisions to 19 TAC Chapter 227, the SBEC received a suggestion to require an EPP to notify the TEA of contingent admissions within five business days. TEA staff agreed with the suggestion, but because this additional clarification may have been considered a substantive change at adoption, this clarification was added to the draft reporting requirements in 19 TAC Chapter 229, which were discussed at the December 2015 SBEC meeting. The SBEC proposes that language be added as 19 TAC §227.15(c) to require an EPP to notify the TEA of contingent admissions within seven calendar days. The remaining subsections would be relettered accordingly.

After the language in 19 TAC §227.15(e) was amended in the December 2015 adoption, EPPs asked for clarification on whether post-baccalaureate programs and alternative certification programs at an IHE may admit candidates who had earned an undergraduate degree from the same IHE. The SBEC proposes that the language be amended to clarify that a post-baccalaureate program or an alternative certification program at an IHE may admit candidates who had been provided coursework or training by the IHE prior to contingent admission if the coursework or training was provided as part of the undergraduate degree.

Formal Admission

The SBEC proposes similar changes in 19 TAC §227.17 that were described as recommendations for 19 TAC §227.15.

Incoming Class Grade Point Average

After the language in 19 TAC §227.19(a)(2)(A) was added in the December 2015 adoption, EPPs asked for clarification on how an EPP should determine the admission GPA for the last 60 hours of coursework for applicants who had less than 60 semester credit hours at the IHE in which they are currently enrolled. The SBEC proposes that the language be amended to clarify that an EPP may use transcripts from previously attended IHEs to determine the admission GPA for the last 60 hours of coursework for applicants who had less than 60 semester credit hours at the IHE in which they are currently enrolled.

After the language in 19 TAC §227.19(a)(2)(B) was added in the December 2015 adoption, EPPs asked for clarification on whether an EPP could use grades for coursework from an IHE that were earned after an applicant had been conferred a degree but the applicant was not currently enrolled in the IHE from which the grades were earned. The SBEC proposes that the language be amended to clarify that an EPP may use grades from an applicant's most recent transcript to determine the admission GPA for the last 60 hours of coursework if an applicant earned grades for coursework after the applicant's conferred degree.

Implementation Date

The SBEC proposes that the language in 19 TAC §227.20 be amended so that the subchapter applies to an applicant who is admitted to an EPP on or after January 1, 2017. In the previous two adoptions, the difference between the effective date of the rule and the implementation date of the rule ranged from three to seventeen days. The proposed implementation date would provide EPPs with more time (approximately ten weeks) between the effective date of the rules and the implementation date.

The proposed amendments would have no new procedural and reporting implications. However, EPPs will be required to upload data on individuals who are admitted as candidates into the educator certification online system (ECOS) within seven calendar days from the formal date of admission. SBEC currently requires EPPs to upload data on individuals who are admitted as candidates into ECOS, but there is no deadline for when the upload needs to occur. The proposed amendments would have no additional locally maintained paperwork requirements.

FISCAL NOTE. Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposed amendments are in effect there would be no additional costs for state and local government as a result of enforcing or administering the proposed amendments. There is no effect on local economy; therefore, no local employment statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. Mr. Franklin has determined that for the first five-year period the proposed amendments are in effect the public and student benefit anticipated as a result of the proposed amendments would be the development of clear, minimum EPP admission criteria that would ensure educators are prepared to positively affect the performance of the diverse student population of this state.

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 July 1, 2016, and ends August 1, 2016. The SBEC will take registered oral and written comments on the proposed amendments of 19 TAC §§227.1, 227.5, 227.10, 227.15, 227.17, 227.19, and 227.20 at the August 5, 2016 meeting in accordance with the SBEC board operating policies and procedures. 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 sbecrules@tea.texas.gov. All requests for a public hearing on the proposed amendments submitted under the Administrative

Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on July 1, 2016.

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; §21.044(a), which requires the SBEC to propose rules establishing the training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program and to specify the minimum academic qualifications required for a certificate; §21.044(g)(3), which requires EPPs to provide certain information on EPP performance; §21.0441, which requires the SBEC to adopt rules setting certain admission requirements for EPPs; §21.049(a), which authorizes the SBEC to propose rules providing for educator certification programs as an alternative to traditional EPPs; and §21.050(a), which states that a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under TEC, Chapter 28, Subchapter A.

CROSS REFERENCE TO STATUTE. The proposed amendments implement the TEC, §§21.031, 21.044(a) and (g)(3), 21.0441, 21.049(a), and 21.050(a).

§227.1. General Provisions.

(a) It is the responsibility of the education profession as a whole to attract applicants and to retain educators who demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state.

(b) Educator preparation programs should inform all applicants that:

(1) pursuant to the Texas Education Code (TEC), §22.083, candidates must undergo a criminal history background check prior to employment as an educator; and

(2) pursuant to the TEC, §22.0835, candidates must undergo a criminal history background check prior to clinical teaching.

(c) Educator preparation programs (EPPs) shall inform all applicants, in writing, of the following:

(1) the admission requirements as specified in this chapter;

(2) the requirements for program completion as specified in Chapter 228 of this title (relating to Educator Preparation Requirements); and

(3) in accordance with TEC, §21.044(e)(3):

(A) the effect of supply and demand forces on the educator workforce in this state; and

(B) the performance over time of the EPP for the past five years.

§227.5. *Definitions.*

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

(1) Accredited institution of higher education--An institution of higher education that, at the time it conferred the degree, was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board.

(2) Alternative certification program--An approved educator preparation program, delivered by entities described in §228.20(a) of this title (relating to Governance of Educator Preparation Programs), specifically designed as an alternative to a traditional undergraduate certification program, for individuals already holding at least a bachelor's degree from an accredited institution of higher education.

(3) Applicant--An individual seeking admission to an educator preparation program for any class of certificate.

(4) Candidate--An individual who has been formally or contingently admitted to an educator preparation program; also referred to as an enrollee or participant [seeking certification].

(5) Certification category--A certificate type within a certification class; also known as certification field.

(6) Certification class--A certificate, as described in §230.33 of this title (relating to Classes of Certification), that has defined characteristics; also known as certification field.

(7) [(5)] Clinical teaching--An assignment, as described in §228.35 of this title (relating to Preparation Program Coursework and/or Training).

(8) Content certification examination--A standardized test or assessment required by statute or State Board for Educator Certification rule that governs an individual's admission to an educator preparation program or certification as an educator.

(9) [(6)] Contingency admission--Conditional admission to an educator preparation program when an applicant meets all admission requirements specified in §227.10 of this title (relating to Admission Criteria) except[, pending] graduation and degree conferred from an accredited institution of higher education.

(10) [(7)] Educator preparation program--An entity that must be approved by the State Board for Educator Certification to recommend candidates in one or more classes of certificates.

(11) [(8)] Formal admission--Admission to an educator preparation program when an applicant meets all admission requirements specified in §227.10 of this title (relating to Admission Criteria).

(12) [(9)] Incoming class--Individuals contingently or formally admitted between September 1 and August 31 of each year by an educator preparation program.

(13) [(10)] Post-baccalaureate program--An educator preparation program, delivered by an accredited institution of higher education and approved by the State Board for Educator Certification to recommend candidates for certification, that is designed for individuals who already hold at least a bachelor's degree from an accredited institution of higher education and are seeking an additional degree [that must be approved by the State Board for Educator Certification to recommend candidates for certification].

[(11)] Internship--A one-year supervised professional assignment at a public school accredited by the TEA or a TEA-recognized private school that may lead to completion of a standard certificate.]

(14) [(12)] Semester credit hour--One semester credit hour is equal to 15 clock-hours at an accredited institution of higher education.

§227.10. *Admission Criteria.*

(a) The educator preparation program (EPP) delivering educator preparation shall require the following minimum criteria of all applicants seeking initial certification in any class of certificate, unless specified otherwise, prior to admission to the program.[:]

(1) For [fœr] an undergraduate university program, an applicant shall be enrolled in an accredited institution of higher education.[:]

(2) For [fœr] an alternative certification program or post-baccalaureate program, an applicant shall have, at a minimum, a bachelor's degree earned from and conferred by an accredited institution of higher education.[:]

(3) For [fœr] an undergraduate university program, alternative certification program, or post-baccalaureate program, to be eligible for admission into an EPP, an applicant [intø an EPP] shall have a grade point average (GPA) of at least 2.5 before admission.

(A) The GPA shall be calculated from an official transcript as follows:

(i) 2.5 on all coursework previously attempted by the person at an accredited institution of higher education:

(I) at which the applicant is currently enrolled (undergraduate university program formal admission, alternative certification program contingency admission, or post-baccalaureate program contingency admission); or

(II) from which the most recent bachelor's degree or higher from an accredited institution of higher education was conferred (alternative certification program formal admission or post-baccalaureate program formal admission); or

(ii) 2.5 in the last 60 semester credit hours on all coursework previously attempted by the person at an accredited institution of higher education:

(I) at which the applicant is currently enrolled (undergraduate university program formal admission, alternative certification program contingency admission, or post-baccalaureate program contingency admission). If an applicant has less than 60 semester credit hours on the official transcript from the accredited institution of higher education at which the applicant is currently enrolled, the EPP shall use grades from all coursework previously attempted by a person at the most recent accredited institution(s) of higher education, starting with the most recent coursework from the official transcript(s), to calculate a GPA for the last 60 semester credit hours; or

(II) from which the most recent bachelor's degree or higher from an accredited institution of higher education was conferred. If an applicant has hours beyond the most recent degree, an EPP may use grades from the most recent 60 hours of coursework from an accredited institution of higher education (alternative certification program formal admission or post-baccalaureate program formal admission).

(B) An exception to the minimum GPA requirement may be granted by the program director only in extraordinary circumstances and may not be used by a program to admit more than 10% of any incoming class of candidates. An applicant is eligible for this exception if:

(i) documentation and certification from the program director that an applicant's work, business, or career experience

demonstrates achievement equivalent to the academic achievement represented by the GPA requirement; and

(ii) in accordance with the Texas Education Code, §21.0441(b), an applicant must pass [perform at a satisfactory level on] an appropriate content certification [matter] examination as specified in paragraph (4)(C) and (D) of this subsection for each subject in which the applicant seeks certification prior to admission. Applicants who do not meet the minimum GPA requirement and have previously been admitted into an EPP may request permission to register for an appropriate content certification [matter] examination if the applicant is not seeking admission to the same EPP that previously granted test approval [as specified in paragraph (4)(D) of this subsection under procedures approved by Texas Education Agency (TEA) staff].

(C) An applicant who is seeking a career and technical education (CTE) certificate that does not require a degree from an accredited institution of higher education is exempt from the minimum GPA requirement.

(D) An applicant who does not meet the minimum GPA requirement and is seeking certification in a class other than classroom teacher must perform at or above a score equivalent to a 2.5 GPA on the Verbal Reasoning, Quantitative Reasoning, and Analytic Writing sections of the GRE® (Graduate Record Examinations) revised General Test. The equivalent scores will be determined by the State Board for Educator Certification and will be published annually on the Texas Education Agency (TEA) website.

(4) For [fɔr] an applicant who will be seeking an initial certificate in the classroom teacher class of certificate, the applicant shall have successfully completed, prior to admission, at least:

(A) a minimum of 12 semester credit hours in the subject-specific content area for the certification sought, unless certification sought is for mathematics or science at or above Grade 7; or

(B) 15 semester credit hours in the subject-specific content area for the certification sought if the certification sought is for mathematics or science at or above Grade 7; or

(C) a passing score on a comparable content certification examination administered by a vendor on the TEA-approved vendor list published by the commissioner of education on the TEA website for the calendar year during which the applicant seeks admission; or

(D) for an applicant [applicants] who has [have] not previously been admitted into an EPP, a passing score on a [pre-admission] content certification examination administered by a TEA-approved vendor. An applicant [Applicants] who has [have] previously been admitted into an EPP may request permission to register for a [pre-admission] content certification examination if an applicant is not seeking admission to the same EPP that previously granted test approval. [under procedures approved by TEA staff;]

(5) An applicant must demonstrate [demonstration of] basic skills in reading, written communication, and mathematics by meeting the requirements of the Texas Success Initiative under the rules established by the Texas Higher Education Coordinating Board in Part 1, Chapter 4, Subchapter C, of this title (relating to Texas Success Initiative), including one of the requirements established by §4.54 of this title (relating to Exemptions, Exceptions, and Waivers).[;]

(6) An applicant must demonstrate [demonstration of] the English language proficiency skills as specified in §230.11 of this title (relating to General Requirements).

(A) An applicant for CTE certification that does not require a bachelor's degree from an accredited institution of higher edu-

cation may satisfy the English language proficiency requirement with an associate's degree or high school diploma or the equivalent that was earned at an accredited institution of higher education or an accredited high school in the United States.[;]

(B) An applicant to a university undergraduate program that leads to a bachelor's degree may satisfy the English language proficiency requirement by meeting the English language proficiency requirement of the accredited institution of higher education at which the applicant is enrolled.

(7) An applicant must submit an application and participate in either an interview or other screening instrument to determine if the EPP applicant's knowledge, experience, skills, and aptitude are appropriate for the certification sought.[; and]

(8) An applicant must fulfill any other academic criteria for admission that are published and applied consistently to all EPP applicants.

(b) An EPP may adopt requirements in addition to and [that do] not in conflict with those [explicitly] required in this section.

(c) An EPP may not admit an applicant who:

(1) has been reported as completing all EPP requirements by another EPP in the same certification category or class [field], unless the applicant only needs certification examination approval; or

(2) has been employed for three years in a public school under a permit or probationary certificate as specified in Chapter 230, Subchapter D, of this title (relating to Types and Classes of Certificates Issued), unless the applicant is seeking clinical teaching that may lead to the issuance of an initial standard certificate.

(d) An EPP may admit an applicant for CTE certification who has met the experience and preparation requirements specified in Chapter 230 of this title (relating to Professional Educator Preparation and Certification) and Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates).

(e) An EPP may admit an applicant who has met the minimum academic criteria through credentials from outside the United States that are determined to be equivalent to those required by this section using the procedures and standards specified in Chapter 245 of this title (relating to Certification of Educators from Other Countries).

§227.15. Contingency Admission.

(a) An applicant may be accepted into an alternative certification program or post-baccalaureate program on a contingency basis pending receipt of an official transcript showing degree conferred, as specified in §227.10(a)(2) of this title (relating to Admission Criteria), provided that:

(1) the applicant is currently enrolled in and expects to complete the courses and other requirements for obtaining, at a minimum, a bachelor's degree at the end of the semester in which admission to the program is sought;

(2) all other admission requirements specified in §227.10 of this title have been met;

(3) the EPP must notify the applicant of the offer of contingency admission in writing by mail, personal delivery, facsimile, email, or an electronic notification; and

(4) the applicant must accept the offer of contingency admission in writing by mail, personal delivery, facsimile, email, or an electronic notification.

(b) The date of contingency admission shall be effective upon the applicant's written acceptance of the offer of contingency admission.

(c) An EPP must notify the Texas Education Agency within seven calendar days of a candidate's contingency admission.

(d) [(e)] An applicant admitted on a contingency basis may begin program training and may be approved to take a certification examination, but shall not be recommended for a probationary certificate until the bachelor's degree or higher from an accredited institution of higher education (IHE) has been conferred.

(e) [(d)] Except as provided by this section, an alternative certification program or post-baccalaureate program, prior to admission on a contingency basis, shall not provide coursework, training, and/or examination approval to an applicant that leads to initial certification in any class of certificate. A post-baccalaureate or alternative certification program at an IHE may admit an applicant if coursework and training was provided by the same IHE as part of the degree to be conferred.

(f) [(e)] The contingency admission will be valid for only the fall, spring, or summer semester for which the contingency admission was granted and may not be extended for another semester. The end of each semester shall be consistent with the common calendar established by the Texas Higher Education Coordinating Board.

§227.17. *Formal Admission.*

(a) For an applicant to be formally admitted to an educator preparation program (EPP), the applicant must meet all the admission requirements specified in §227.10 of this title (relating to Admission Criteria).

(b) For an applicant to be formally admitted to an EPP, the EPP must notify the applicant of the offer of formal admission in writing by mail, personal delivery, facsimile, email, or an electronic notification.

(c) For an applicant to be considered formally admitted to the EPP, the applicant must accept the offer of formal admission in writing by mail, personal delivery, facsimile, email, or an electronic notification.

(d) The date of formal admission shall be effective upon the applicant's written acceptance of the offer of formal admission.

(e) An EPP must notify the Texas Education Agency within seven calendar days of a candidate's formal admission.

(f) [(e)] Except as provided by §227.15 of this title (relating to Contingency Admission), an alternative certification program or post-baccalaureate program, prior to formal admission, shall not provide coursework, training, and/or examination approval to an applicant that leads to initial certification in any class of certificate. A post-baccalaureate or alternative certification program at an institution of higher education (IHE) may admit an applicant if coursework and training was provided by the same IHE as part of a previous degree that was conferred.

§227.19. *Incoming Class Grade Point Average.*

(a) The overall grade point average (GPA) of each incoming class admitted between September 1 and August 31 of each year by an educator preparation program (EPP), including an alternative certification program, may not be less than 3.00 on a four-point scale or the equivalent. In computing the overall GPA of an incoming class, an EPP may include:

(1) the GPA of each person in the incoming class based on all coursework previously attempted by the person at an accredited institution of higher education (IHE):

(A) at which the applicant is currently enrolled (undergraduate university program formal admission, alternative certification program contingency admission, or post-baccalaureate program contingency admission); or

(B) from which the most recent bachelor's degree or higher from an accredited IHE [institution of higher education] was conferred (alternative certification program formal admission or post-baccalaureate program formal admission); or

(2) the GPA of each person in the incoming class based only on the last 60 semester credit hours of all coursework attempted by the person at an accredited IHE [institution of higher education]:

(A) at which the applicant is currently enrolled (undergraduate university program formal admission, alternative certification program contingency admission, or post-baccalaureate program contingency admission). If an applicant has less than 60 semester credit hours on the official transcript from the accredited IHE at which the applicant is currently enrolled, the EPP may use grades from all coursework previously attempted by a person at the most recent accredited IHE(s), starting with the most recent coursework from the official transcript(s), to calculate a GPA for the last 60 semester credit hours; or

(B) from which the most recent bachelor's degree or higher from an accredited IHE [institution of higher education] was conferred. If an applicant has hours beyond the most recent degree, an EPP may use grades from the most recent 60 hours of coursework from an accredited IHE (alternative certification program formal admission or post-baccalaureate program formal admission).

(b) A person seeking career and technical education certification is not included in determining the overall GPA of an incoming class.

§227.20. *Implementation Date.*

This subchapter applies to an applicant who is admitted to an educator preparation program on or after January 1, 2017 [March 1, 2016].

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 20, 2016.

TRD-201603118

Cristina De La Fuente-Valadez

Director, Rulemaking, Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: July 31, 2016

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

TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 174. TELEMEDICINE

22 TAC §174.11

The Texas Medical Board (Board) proposes amendments to §174.11, concerning On-Call Services.

The amendment to §174.11 amends and adds language referring to Chapter 177 (relating to Business Organizations, also proposed for amendment in this issue of the *Texas Register*) and newly proposed Subchapter E titled "Physician Call Coverage Medical Services," which provides physicians guidance and

sets forth the minimum requirements relating to on-call services and agreements. The proposed amendment to relocate the substantive requirements related to the topic of "on-call" services to Chapter 177 results from the Board's meetings with stakeholders who expressed the need for more clarity with respect to the application of the rule and whether it applied to all physicians or just those physicians practicing in the area of telemedicine. The removal of the substantive requirements for "on-call" services from Chapter 174 of this title (relating to Telemedicine), and relocation of the call coverage topic to Chapter 177 of this title will alleviate such confusion and provide more clarity as to the rule's applicability.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to improve all physicians' understanding of the rules relating to call coverage and clearly provide guidance and parameters necessary for allowing physicians to provide continuity of care to patients in Texas while protecting patient health and welfare, through the elimination of the strict rule of reciprocity and relocation of the call coverage rule to Chapter 177, Subchapter E of this title.

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

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

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§174.11. *On-Call [On-call] Services.*

Physicians, who ~~are of the same specialty and provide reciprocal services, may~~ provide on-call telemedicine medical services must meet the requirements set forth under Chapter 177, Subchapter E of this title (relating to Physician Call Coverage Medical Services) [for each other's active patients].

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 15, 2016.

TRD-201603049

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: July 31, 2016

For further information, please call: (512) 305-7016



CHAPTER 177. BUSINESS ORGANIZATIONS AND AGREEMENTS

SUBCHAPTER C. JOINTLY OWNED ENTITIES

22 TAC §177.16

The Texas Medical Board (Board) proposes amendments to §177.16, concerning Physician Assistants.

The amendments eliminate subsection (e) and amend subsection (f) in order to align with a recent 3rd Court of Appeals decision, which invalidated part of the rule relating to the grandfathering clause and entities solely owned by physician assistants. The rule as written in 2011 was pursuant to HB 2098 (82nd Regular Session) which amended §162.053 and §204.209 of the Texas Occupations Code and stated that "an ownership interest acquired before the effective date of this Act is governed by the law in effect at the time the interest was acquired, and the former law is continued in effect for that purpose." Accordingly, the amendments to this section correct portions of the rule that were invalidated by the 3rd Court of Appeals decision and bring the rule in line with the intent of HB 2098.

The amendment to the title of Chapter 177, Business Organizations, adds the word "Agreements" to reflect the proposed addition of new Subchapter E, so that the title will read "Business Organizations and Agreements".

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to have rules that are accurate and consistent with statutes.

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

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

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§177.16. *Physician Assistants.*

(a) Corporations.

(1) Pursuant to §22.0561 of the Business Organizations Code, a physician and a physician assistant may form a corporation to perform a professional service that falls within the scope of practice of those practitioners.

(2) A physician assistant may not:

(A) be an officer of the corporation;

(B) contract with or employ a physician to be a supervising physician of the physician assistant or of any physician in the corporation;

(C) direct the activities of a physician in the practice of medicine;

(D) interfere with supervision of physician assistants by a physician owner or supervising physician;

(E) own individually or in combination with other physician assistants more than a minority ownership interest in an entity created under this subsection; or

(F) have an ownership interest that equals or exceeds the ownership interest of any physician owner.

(b) Partnerships.

(1) Pursuant to §152.0551 of the Business Organizations Code, physicians and physician assistants may create a partnership to perform a professional service that falls within the scope of practice of those practitioners.

(2) A physician assistant may not:

(A) be a general partner or participate in the management of the partnership;

(B) contract with or employ a physician to be a supervising physician of the physician assistant or of any physician in the partnership;

(C) direct the activities of a physician in the practice of medicine;

(D) interfere with supervision of physician assistants by a physician owner or supervising physician;

(E) individually or in combination with other physician assistants have more than a minority ownership interest in the partnership; or

(F) have an ownership interest that equals or exceeds the ownership interest of any physician owner.

(3) An organizer of the entity, as defined under §3.004 of the Texas Business Organization Code, must be a physician and ensure that a physician or physicians control and manage the entity.

(c) Professional Associations and Professional Limited Liability Companies.

(1) Pursuant to §301.012 of the Business Organizations Code, physicians and physician assistants may form and own a professional association or professional limited liability company to perform a professional service that falls within the scope of practice of those practitioners.

(2) A physician assistant may not:

(A) be an officer in the professional association or professional limited liability company;

(B) contract with or employ a physician to be a supervising physician of the physician assistant or of any physician in the professional association or professional limited liability company;

(C) direct the activities of a physician in the practice of medicine;

(D) interfere with supervision of physician assistants by a physician owner or supervising physician;

(E) individually or in combination with other physician assistants have more than a minority ownership interest in the professional association or professional limited liability company; or

(F) have an ownership interest that equals or exceeds the ownership interest of any physician owner.

(3) An organizer of the entity, as defined under §3.004 of the Texas Business Organization Code, must be a physician and ensure that a physician or physicians control and manage the entity.

(d) All physicians and physician assistants who jointly own an entity must annually submit a joint form to the Board providing date of formation of the entity, each licensee's ownership interest in the entity, proof of ownership, and proof of date of formation, along with required fees as provided in Chapter 175 of this title (relating to Fees and Penalties).

~~[(e) Physician assistants who solely own an entity or jointly own an entity with a non-physician must annually submit a form to the Board providing the date of formation of the entity, each person's ownership interest in the entity, proof of ownership, and proof of date of formation, along with required fees as provided in Chapter 175 of this title.]~~

~~(e) [(f)] Restrictions on ownership interests, shall apply only to those entities formed on or after June 17, 2011. An ownership interest acquired before the effective date of this Act is governed by the law in effect at the time the interest was acquired. [However, if the ownership interests of an entity changes, or an entity contracts with a new supervising physician to provide services, then the restrictions on ownership shall apply to the entity.]~~

~~(f) [(g)] This section shall not apply to pain management clinics owned and operated pursuant to Chapter 195 of this title (relating to Pain Management Clinics).~~

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 15, 2016.

TRD-201603050

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: July 31, 2016

For further information, please call: (512) 305-7016

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**SUBCHAPTER E. PHYSICIAN CALL
COVERAGE MEDICAL SERVICES**

22 TAC §§177.18 - 177.20

The Texas Medical Board (Board) proposes new Subchapter E, Physician Call Coverage Medical Services, §§177.18 - 177.20.

The proposed new rules are made in response to stakeholders' requests for an expanded call coverage model that would allow more options for providing continuity of care to patients during a regular treating physician's temporary absence, so that reciprocity and the same specialty practice area are no longer strictly required for call coverage practice. The purpose of adding the language to Chapter 177 is also to provide clarity with respect to the application of the rules to all physicians providing call coverage, not just physicians providing telemedicine care in Texas.

The amendment to the title of Chapter 177, Business Organizations, adds the word "Agreements" to reflect the proposed addition of new Subchapter E, so that the title will read "Business Organizations and Agreements".

New Subchapter E, "Physician Call Coverage Medical Services," is added, with three new sections: §§177.18, 177.19, and 177.20.

New §177.18, concerning Purpose and Scope, sets forth the purpose, scope and applicability of Subchapter E.

New §177.19, concerning Definitions, defines the "Act" and the "Board" as it used throughout Subchapter E.

New §177.20, concerning Call Coverage Minimum Requirements, sets forth specific minimum requirements for physician call coverage agreements generally, and further to delineate the parameters and requirements for two call coverage models: "Non-Reciprocal Call Coverage Model", and "Reciprocal Call Coverage Model."

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing this proposal will be to create an expanded call coverage model that allows increased options for providing safe and quality medical care to Texas citizens during a treating physician's temporary absence. The public benefit further anticipated as a result of enforcing the sections will be to provide improved guidance to all physicians regarding minimum requirements for all physician call coverage being provided in Texas, which will improve patient safety and quality of medical care.

Mr. Freshour has also determined that for the first five-year period the sections are in effect there will be no fiscal implication to state or local government as a result of enforcing the sections as proposed. The effect to individuals required to comply with these rules as proposed will include costs associated with preparing a call coverage agreement. The effect on small or micro businesses will include costs associated with preparing a call coverage agreement. However, because the new rules will allow expanded call coverage for physicians' patients, the anticipated economic costs may be offset by potential industry growth, as it will create opportunities for new business arrangements and/or opportunities.

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

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§177.18. Purpose and Scope.

(a) Purpose. Pursuant to §153.001 of the Act, the Board is authorized to adopt rules relating to the practice of medicine. The purpose of this subchapter is to set forth minimum requirements relating to a physician's provision of call coverage services for another physician's established patients. Advances in technology have enabled a more expansive model of call coverage, requiring that minimum standards be adopted so as to better protect and promote the health and safety of

the public while accounting for such technological advances. In setting forth these rules, the board recognizes that a call coverage model outside of the traditional office setting between physicians who are not of the same specialty and do not provide reciprocal call coverage for each other can provide effective and safe patient care, contingent upon the physician meeting the standard of care for the treatment provided under an agreement, and minimum standards being in place that correspond to the level of care being provided. Such standards will allow increased access to healthcare, while maintaining accountability for communication between physicians, in order to provide continuity and coordination of care, thereby protecting patient safety and health.

(b) Scope. This chapter applies to all physicians providing call coverage in Texas, regardless of the nature and scope of technology being used to provide care to patients through the call coverage relationship.

§177.19. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the contents clearly indicate otherwise.

(1) Act--The Texas Medical Practice Act, Texas Occupations Code Annotated, Title 3 Subtitle B.

(2) Board--Texas Medical Board.

§177.20. Call Coverage Minimum Requirements.

(a) Generally.

(1) Physicians may provide medical services through a call coverage agreement (CCA) to established patients of a physician who requests the coverage. A covering physician who enters into a CCA is responsible for meeting the standard of care for patient care provided during such call coverage.

(2) The covering physician is required to relay a report to the physician who requested the coverage regarding the care provided. The covering physician may satisfy the report requirement described in this subsection by updating the patient's medical record, sending a written report, or providing the information to the physician who requested the coverage through other methods. The duty to provide the report is the sole, exclusive obligation of the covering physician, and cannot be delegated to or satisfied by the patient or patient representative providing a report or otherwise recounting the encounter to the physician who requested coverage. The physician who requested the call coverage must make the report provided by the covering physician a part of the patient's medical record.

(b) Call Coverage Models.

(1) Non-Reciprocal Call Coverage Model. For physicians who enter into a CCA and are not of the same specialty or similar specialties, or do not require reciprocal medical call coverage services for the covering physician's patients through the CCA, the CCA must be in writing and at a minimum include terms that:

(A) establish a covering physician's responsibility for meeting the standard of care in providing call coverage for the patients of the physician requesting coverage;

(B) provide a list of all of the physicians that may provide the call coverage under the CCA;

(C) require that at the time of the service provided, the covering physician have access to the necessary medical records related to the patient who is being treated under the CCA;

(D) for non-emergency care provided for a diagnosis previously made by the physician who requested call coverage, require the covering physician to furnish a report to the physician requesting

the call coverage within 7 days from the end of each call coverage period;

(E) for non-emergency care provided for an injury, illness, or disease not previously diagnosed by the physician who requested call coverage, require the covering physician to furnish a report to the physician who requested the call coverage within 72 hours from the end of each call coverage period; and

(F) for emergency care provided, require the covering physician to furnish a report to the physician who requested call coverage within an appropriate time period according to the circumstances of the emergency situation.

(2) Reciprocal Call Coverage Model.

(A) For physicians who enter a CCA and are of the same specialty or similar specialties and require reciprocal medical call coverage services for the covering physician's patients, the CCA may be oral or written.

(B) Terms of the CCA at a minimum must establish the covering physician's responsibility for meeting the standard of care for patient care provided during such call coverage and relaying a report to the physician who requested the coverage regarding such patient care provided within an appropriate amount of time from the conclusion of each call coverage period.

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 15, 2016.

TRD-201603051

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: July 31, 2016

For further information, please call: (512) 305-7016



CHAPTER 187. PROCEDURAL RULES

SUBCHAPTER B. INFORMAL BOARD PROCEEDINGS

22 TAC §187.18

The Texas Medical Board (Board) proposes amendments to §187.18, concerning Informal Show Compliance Proceeding and Settlement Conference Based on Personal Appearance.

The amendments include adding language to subsection (c) to clarify that the requirements related to a licensee's submission of pre-ISC material also applies to written statements by witnesses. Subsection (e) is amended to clarify the type of evidence that may and may not be presented during the ISC proceeding, which better comports with the board's current procedures. Subsection (g) is amended to remove the word "witness" and add clarifying language about who may testify outside the presence of the licensee. Subsection (h) is amended to add additional language relating to the type of untimely evidence the panel may refuse to consider.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing

this proposal will be to have rules that are clear, unambiguous and align with the board's current procedures.

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

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

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The amendments are also proposed under the authority of Texas Occupations Code Chapter 164.

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

§187.18. Informal Show Compliance Proceeding and Settlement Conference Based on Personal Appearance.

(a) After referral of an investigation to the agency's legal division, the Hearings Coordinator of the board shall schedule an ISC before an ISC Panel, composed of two or more board representatives to be held after proper notice to the licensee. One board representative must be a public member. If the matter is before the Medical Board, at least one board representative must be a physician member.

(b) Requests to reschedule the ISC by a licensee must be in writing and shall be referred to the Hearings Counsel for consideration. To avoid undue disruption of the ISC schedule, the Hearings Counsel should grant a request only after conferring with the Hearings Coordinator and strictly applying the following guidelines:

(1) A request by a licensee to reschedule an ISC must be in writing and may be granted only if the licensee provides satisfactory evidence of the following requirements:

(A) A request received by the agency within five business days after the licensee received notice of the date of the ISC, must provide details showing that:

(i) the licensee has a conflicting event that had been scheduled prior to receipt of notice of the ISC;

(ii) the licensee has made reasonable efforts to reschedule such event but a conflict cannot reasonably be avoided.

(B) A request received by the agency more than five business days after the licensee received notice of the date of the ISC must provide details showing that an extraordinary event or circumstance has arisen since receipt of the notice that will prevent the licensee from attending the ISC. The request must show that the request is made within five business days after the licensee first becomes aware of the event or circumstance.

(2) A request by a licensee to reschedule an ISC based on the failure of the agency to send timely notice before the date scheduled for the ISC, as required by §164.003 of the Act, shall be granted, provided the request is received by the agency within five business days after the late notice is received by the licensee.

(c) Prior to the ISC, the board representatives shall be provided with the information sent to the licensee by the board staff and all information timely received in response from the licensee including, but

not limited to, written statements by witnesses. Information must be received from the licensee at least five business days prior to the ISC for complaints filed before September 1, 2011. For complaints filed with the board on or after September 1, 2011, the information must be received at least 15 days prior to the date of the ISC.

(d) An ISC may be conducted by only one panelist if:

(1) the ISC is related to an order of the board, such as to show compliance, a probation appearance, or a request for termination or modification, or

(2) the affected licensee waives the requirement that at least two panelists conduct the ISC. In such situations, the panelist may be either a physician, physician assistant, or acupuncturist (depending on the licensee involved) or a member who represents the public.

(e) The board representatives shall allow:

(1) the board staff to present a summary of the allegations and the facts that the board staff reasonably believes could be proven by competent evidence at a formal hearing;

(2) the licensee to reply to the board staff's presentation and present facts the licensee reasonably believes could be proven by competent evidence at a formal hearing;

(3) presentation of evidence by the board staff and the licensee~~[-]~~ which, in the discretion of the board representatives, is relevant to the proceeding. This evidence may include medical and office records, x-rays, pictures, film recordings of all kinds, audio and video recordings, diagrams, charts, drawings, and any other illustrative or explanatory materials. Explanatory materials may include: ~~[which in the discretion of the board representatives are relevant to the proceeding;]~~

(A) written statements by witnesses that were included in the licensee's responsive material described in subsection (c) of this section; and

(B) presentation of oral or written statements by complainant or a victim of an alleged sexual or assaultive offense by a licensee.

(4) representation of the licensee by an authorized representative;

(5) presentation of oral or written statements by the licensee or authorized representative;

(6) presentation of oral or written testimony by TxPHP representative, compliance officer, or other board staff to describe the status of a licensee's compliance with a PHP contract, board order(s), if there are allegations of non-compliance, or applicable laws and rules;

~~[(6) presentation of oral or written statements or testimony by witnesses;]~~

~~[(7) questioning of the witnesses in a manner prescribed by the panel;]~~

~~(7) [(8) questioning of the licensee;~~

~~(8) [(9) closing statement by the licensee;~~

~~(9) [(10) closing statement by the board's staff; and~~

~~(10) [(11) upon request by board representatives, the board staff may propose appropriate disciplinary action and the licensee or authorized representative may respond.~~

(f) The board representatives, board staff, the licensee, and the licensee's authorized representative shall be present during the presentation of statements and testimony during the ISC.

(g) Notwithstanding subsection (f) of this section, the board representatives may allow a complainant, or a victim of an alleged sexual or assaultive offense by licensee, ~~[witness]~~ to testify outside the physical presence of the licensee to protect the person from harassment and/or undue embarrassment, for personal safety concerns, or for any other demonstrated and legitimate need. If such testimony is allowed, arrangements will be made to allow the licensee to listen to the testimony contemporaneously as it is given.

(h) The board representatives may refuse to consider any written witness statement or evidence not submitted in a timely manner without good cause. If the board representatives allow the licensee to submit late evidence, the representatives may reschedule and/or recommend an additional administrative penalty for the late submission.

(i) A board attorney, who has not been involved with the preparation of the case, shall be designated as the Hearings Counsel and shall be present during the ISC and the panel's deliberations to advise the panel on legal issues that arise during the ISC. The Hearings Counsel shall be permitted to ask questions of participants in the ISC to clarify any statement made by the participant. The Hearings Counsel shall provide to the ISC panel a historical perspective on comparable cases that have appeared before the board, keep the proceedings focused on the case being discussed, and ensure that the board's employees and the licensee have an opportunity to present information related to the case.

(j) At the ISC, the board representatives shall attempt to resolve disputed matters and the representatives may call upon the board staff at any time for assistance in conducting the ISC.

(k) The board representatives shall prohibit or limit access to the board's investigative file by the licensee, the licensee's authorized representative, the complainant(s), witnesses, and the public consistent with the Act, §164.007(c).

(l) On request by a licensee, the board shall make a recording of the ISC. The request must be submitted in writing, and received by the Board at least 15 days prior to the date of the ISC. Deliberations of the ISC panel shall be excluded from any such recording. The media format of the recording shall be determined by the board. The recording is part of the investigative file and may not be released to a third party unless authorized under the Act. The board may charge the licensee a fee to cover the cost of recording the proceeding. Licensees and their representatives may not independently record an ISC.

(m) The ISC shall be informal and shall not follow the procedures established under this title for formal board proceedings.

(n) At the conclusion of the presentations, the board representatives shall deliberate in order to make recommendations for the disposition of the complaint or allegations. An employee of the board who participated in the presentation of the allegation or information gathered in the investigation of the complaint, the affected licensee, the licensee's authorized representative, the complainant, the witnesses, and members of the public may not be present during the deliberations. The Hearings Counsel may be present only to advise the panel on legal issues and to provide information on comparable cases that have appeared before the board.

(o) The board representatives may:

(1) make recommendations to dismiss the complaint or allegations. The dismissal of any matter is without prejudice to additional investigation and/or reconsideration of the matter at any time;

(2) make recommendations regarding an agreed order and propose resolution of the issues to the licensee to be reduced to writing

and processed in accordance with §187.19 of this chapter [title] (relating to Resolution by Agreed Order);

- (3) defer the ISC, pending further investigation;
- (4) direct that a formal Complaint be filed with SOAH;
- (5) recommend to the President of the board that a Disciplinary Panel be convened to consider the temporary suspension or restriction of the licensee's license;
- (6) recommend the imposition of an administrative penalty pursuant to §§187.75 - 187.82 of this chapter (relating to Procedural Rules); or
- (7) recommend that a remedial plan be issued to resolve the complaint pursuant to §187.9 of this chapter (relating to Board Actions).

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 15, 2016.
TRD-201603052
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Earliest possible date of adoption: July 31, 2016
For further information, please call: (512) 305-7016



CHAPTER 199. PUBLIC INFORMATION

22 TAC §199.6

The Texas Medical Board (Board) proposes new §199.6, concerning Enhanced Contract or Performance Monitoring.

New §199.6 delineates the criteria and requirements for the agency's identification of and monitoring of certain contracts. This new section is added in accordance with the passage of SB 20 (85th Regular Session) which amended Chapter 2261 of the Texas Government Code.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to have rules that are consistent with state law.

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

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

The new section is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§199.6. Enhanced Contract or Performance Monitoring.

(a) A contract for the purchase of goods or services that has a value exceeding \$1 million shall be considered to be a contract requiring enhanced monitoring pursuant to Texas Government Code, §2261.253.

(b) The board shall be informed and provided information about such contract.

(c) The agency's procurement manager or staff shall immediately inform the Executive Director and the board should any serious risk or issue arises, during the contract term, with respect to a contract monitored under this section.

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

Filed with the Office of the Secretary of State on June 15, 2016.
TRD-201603053
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Earliest possible date of adoption: July 31, 2016
For further information, please call: (512) 305-7016



CHAPTER 200. STANDARDS FOR PHYSICIANS PRACTICING COMPLEMENTARY AND ALTERNATIVE MEDICINE

22 TAC §200.3

The Texas Medical Board (Board) proposes an amendment to §200.3, concerning Practice Guidelines for the Provision of Complementary and Alternative Medicine.

The amendment corrects an incorrect reference to the "board of medical examiners."

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to have rules that are accurate and reflect the actual name of the agency.

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

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

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§200.3. *Practice Guidelines for the Provision of Complementary and Alternative Medicine.*

A licensed physician shall not be found guilty of unprofessional conduct or be found to have committed professional failure to practice medicine in an acceptable manner solely on the basis of employing a health care method of complementary or alternative medicine, unless it can be demonstrated that such method has a safety risk for the patient that is unreasonably greater than the conventional treatment for the patient's medical condition. The Texas Medical Board [Texas State Board of Medical Examiners] will use the following guidelines to determine whether a physician's conduct violates the Medical Practice Act, §§164.051-.053 in regard to providing complementary and alternative medical treatment.

(1) Patient Assessment. Prior to offering advice about complementary and alternative health care therapies, the physician shall undertake an assessment of the patient. This assessment should include but not be limited to, conventional methods of diagnosis and may include non-conventional methods of diagnosis. Such assessment shall be documented in the patient's medical record and be based on performance and review of the following listed in subparagraphs (A) - (D) of this paragraph:

(A) an appropriate medical history and physician examination of the patient;

(B) the conventional medical treatment options to be discussed with the patient and referral input, if necessary;

(C) any prior conventional medical treatments attempted and the outcomes obtained or whether conventional options have been refused by the patient;

(D) whether the complementary health care therapy could interfere with any other recommended or ongoing treatment.

(2) Disclosure. Prior to rendering any complementary or alternative treatment, the physician shall provide information to the patient that includes the following with the disclosure documented in the patient's records:

(A) the objectives, expected outcomes, or goals of the proposed treatment, such as functional improvement, pain relief, or expected psychosocial benefit;

(B) the risks and benefits of the proposed treatment;

(C) the extent the proposed treatment could interfere with any ongoing or recommended medical care;

(D) a description of the underlying therapeutic basis or mechanism of action of the proposed treatment purporting to have a reasonable potential for therapeutic gain that is written in a manner understandable to the patient; and

(E) if applicable, whether a drug, supplement, or remedy employed in the treatment is:

(i) approved for human use by the U.S. Food and Drug Administration (FDA);

(ii) exempt from FDA preapproval under the Dietary Supplement and Health Education Act (DSHEA); or

(iii) a pharmaceutical compound not commercially available and, therefore, is also an investigation article subject to clinical investigation standards as discussed in paragraph (7) of this section.

(3) Treatment Plan.

(A) The physician may offer the patient complementary or alternative treatment pursuant to a documented treatment plan tai-

lored for the individual needs of the patient by which treatment progress or success can be evaluated with stated objectives such as pain relief and/or improved physical and/or psychosocial function. Such a documented treatment plan shall consider pertinent medical history, previous medical records and physical examination, as well as the need for further testing, consultations, referrals, or the use of other treatment modalities.

(B) The treatment offered should:

(i) have a favorable risk/benefit ratio compared to other treatments for the same condition;

(ii) be based upon a reasonable expectation that it will result in a favorable patient outcome, including preventive practices; and

(iii) be based upon the expectation that a greater benefit for the same condition will be achieved than what can be expected with no treatment.

(4) Periodic Review of Treatment. The physician may use the treatment subject to documented periodic review of the patient's care by the physician at reasonable intervals. The physician shall evaluate the patient's progress under the treatment prescribed, ordered or administered, as well as any new information about etiology of the complaint in determining whether treatment objectives are being adequately met.

(5) Adequate Medical Records. In addition to those elements addressed in paragraph (1)(A) - (D) of this section, a physician implementing complementary and alternative therapies shall keep accurate and complete medical records to include:

(A) any diagnostic, therapeutic and laboratory results;

(B) the results of evaluations, consultations and referrals;

(C) treatments employed and their progress toward the stated objectives, expected outcomes, and goals of the treatment;

(D) the date, type, dosage, and quantity prescribed of any drug, supplement, or remedy used in the treatment plan;

(E) all patient instructions and agreements;

(F) periodic reviews;

(G) documentation of any communications with the patient's concurrent healthcare providers informing them of treatment plans.

(6) Therapeutic Validity. All physicians must be able to demonstrate the medical, scientific, or other theoretical principles connected with any healthcare method offered and provided to patients.

(7) Clinical Investigations. Physicians using conventional medical practices or providing complementary and alternative medicine treatment while engaged in the clinical investigation of new drugs and procedures (a.k.a. medical research, research studies) are obligated to maintain their ethical and professional responsibilities. Physicians shall be expected to conform to the following ethical standards:

(A) Clinical investigations, medical research, or clinical studies shall be part of a systematic program competently designed, under accepted standards of scientific research, to produce data that are scientifically valid and significant;

(B) A clinical investigator shall demonstrate the same concern and caution for the welfare, safety and comfort of the patient

involved as is required of a physician who is furnishing medical care to a patient independent of any clinical investigation; and

(C) A clinical investigator shall have patients sign informed consent forms that are compliant with federal regulations, if applicable, and that indicate that the patients understand that they are participating in a clinical trial or investigational research.

(8) If the provisions set out in paragraphs (1) - (5) of this section are met, and if all treatment is properly documented, the board will presume such practices are in conformity with the Medical Practice Act, §§164.051-.053.

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 15, 2016.

TRD-201603054

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: July 31, 2016

For further information, please call: (512) 305-7016



PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.10

The Texas State Board of Examiners of Psychologists proposes an amendment to §463.10, concerning Provisionally Licensed Psychologists. The proposed amendment is necessary due to unforeseen limitations with the Board's shared database system. More specifically, the Board's database system will not allow licensing staff to place the transcript requirement at issue in this rule change, in the initial application module for some applicants and the approved application module for others. The transcript requirement must appear in the same application module for all applicants, otherwise staff will be unable to track the 90 day deadline required by Board rule §463.2.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks has also 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 to help the Board protect the public. There will be no economic costs to persons required to comply with this rule. There will be no effect on small businesses or local economies.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701 within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701 or via email to brenda@tsbep.texas.gov.

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.10. Provisionally Licensed Psychologists.

(a) Application Requirements.

(1) An application for provisional licensure as a psychologist includes, in addition to the requirements set forth in Board rule §463.5 of this title (relating to Application File Requirements), an official transcript which indicates that the applicant has received a doctoral degree in psychology. Additionally, the applicant must meet the requirements of §501.255 of the Psychologists' Licensing Act.

(2) An application for provisional licensure as a psychologist may be filed up to sixty days prior to the date the applicant's doctoral degree is officially conferred, but remains subject to Board rule §463.2 of this title (relating to Application Process). [Furthermore, an applicant may be approved to sit for examinations prior to the Board receiving an official transcript, but no license will be granted until the Board receives an official transcript meeting the requirements of this rule.]

(b) Degree Requirements.

(1) The applicant's transcript must state that the applicant has a doctoral degree that designates a major in psychology. Additionally, the doctoral degree must be from a program accredited by the American Psychological Association or from a regionally accredited institution.

(2) The substantial equivalence of a doctoral degree received prior to January 1, 1979, based upon a program of studies whose content is primarily psychological means a doctoral degree based on a program which meets the following criteria:

(A) Post-baccalaureate program in a regionally accredited institution of higher learning. The program must have a minimum of 90 semester hours, not more than 12 of which are credit for doctoral dissertation and not more than six of which are credit for master's thesis.

(B) The program, wherever it may be administratively housed, must be clearly identified and labeled. Such a program must specify in pertinent institutional catalogs and brochures its intent to educate and train professional psychologists.

(C) The program must stand as a recognizable, coherent organizational entity within the institution. A program may be within a larger administrative unit, e.g., department, area, or school.

(D) There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines. The program must have identifiable faculty and administrative heads who are psychologists responsible for the graduate program. Psychology faculty are individuals who are licensed or provisionally licensed or certified psychologists, or specialists of the American Board of Professional Psychology (ABPP), or hold a doctoral degree in psychology from a regionally accredited institution.

(E) The program must be an integrated, organized sequence of studies, e.g., there must be identifiable curriculum tracks wherein course sequences are outlined for students.

(F) The program must have an identifiable body of students who matriculated in the program.

(G) The program must include supervised practicum, internship, field or laboratory training appropriate to the practice of psychology. The supervised field work or internship must have been a minimum of 1,500 supervised hours, obtained in not less than a 12 month period nor more than a 24 month period. Further, this requirement cannot have been obtained in more than two placements or agencies.

(H) The curriculum shall encompass a minimum of two academic years of full-time graduate studies for those persons who have enrolled in the doctoral degree program after completing the requirements for a master's degree. The curriculum shall encompass a minimum of four academic years of full-time graduate studies for those persons who have entered a doctoral program following the completion of a baccalaureate degree and prior to the awarding of a master's degree. It is recognized that educational institutions vary in their definitions of full-time graduate studies. It is also recognized that institutions vary in their definitions of residency requirements for the doctoral degree.

(I) The following curricular requirements must be met and demonstrated through appropriate course work:

(i) Scientific and professional ethics related to the field of psychology.

(ii) Research design and methodology, statistics.

(iii) The applicant must demonstrate competence in each of the following substantive areas. The competence standard will be met by satisfactory completion at the B level of a minimum of six graduate semester hours in each of the four content areas. It is recognized that some doctoral programs have developed special competency examinations in lieu of requiring students to complete course work in all core areas. Graduates of such programs who have not completed the necessary semester hours in these core areas must submit to the Board evidence of competency in each of the four core areas.

(I) Biological basis of behavior: physiological psychology, comparative psychology, neuropsychology, sensation and perception, psycho-pharmacology.

(II) Cognitive-affective basis of behavior: Learning, thinking, motivation, emotion.

(III) Social basis of behavior: social psychology, group processes, organizational and system theory.

(IV) Individual differences: personality theory, human development, abnormal psychology.

(J) All educational programs which train persons who wish to be identified as psychologists will include course requirements in specialty areas. The applicant must demonstrate a minimum of 24 hours in his/her designated specialty area.

(3) Any person intending to apply for provisional licensure under the substantial equivalence clause must file with the Board an affidavit showing:

(A) Courses meeting each of the requirements noted in paragraph (2) of this subsection verified by official transcripts;

(B) Information regarding each of the instructors in the courses submitted as substantially equivalent;

(C) Appropriate, published information from the university awarding the degree, demonstrating that in paragraph (2)(A) - (J) of this subsection have been met.

(c) An applicant for provisional licensure as a psychologist who is accredited by Certificate of Professional Qualification in Psychology (CPQ) or the National Register or who is a specialist of ABPP

will have met the following requirements for provisional licensure: submission of an official transcript which indicates the date the doctoral degree in psychology was awarded or conferred, submission of documentation of the passage of the national psychology examination at the doctoral level at the Texas cut-off score, and submission of three acceptable reference letters. All other requirements for provisional licensure must be met by these applicants. Additionally, these applicants must provide documentation sent directly from the qualifying entity to the Board office declaring that the applicant is a current member in the organization and has had no disciplinary action from any state or provincial health licensing board.

(d) Trainee Status for Provisional Applicants.

(1) An applicant for provisional licensure who has not yet passed the EPPP and Jurisprudence Examination, but who otherwise meets all provisional licensing requirements and is seeking to acquire the supervised experience required by §501.252(b)(2) of the Psychologists' Licensing Act, may practice under the supervision of a Licensed Psychologist as a provisional trainee for not more than two years.

(2) A provisional trainee status letter shall be issued to an applicant upon proof of provisional licensing eligibility, save and except proof of passage of the EPPP and Jurisprudence Examination.

(3) An individual with trainee status is subject to all applicable laws governing the practice of psychology.

(4) A provisional trainee's status shall be suspended or revoked upon a showing of probable cause of a violation of the Board's rules or any law pertaining to the practice of psychology, and the individual may be made the subject of an eligibility proceeding. The two years period for provisional trainee status shall not be tolled by any suspension of the provisional trainee status.

(5) Following official notification from the Board upon passage of the EPPP and Jurisprudence Examination, or the expiration of two years, whichever occurs first, an individual's provisional trainee status shall terminate.

(6) This subsection, along with all of its subparts, shall take effect on September 1, 2016.

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-201602978

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: July 31, 2016

For further information, please call: (512) 305-7706



CHAPTER 465. RULES OF PRACTICE

22 TAC §465.2

The Texas State Board of Examiners of Psychologists proposes an amendment to §465.2, concerning Supervision. The proposed amendment will ensure that the Board's standards for the supervision of LSSP interns and trainees comport with both federal law and nationally recognized standards of practice as required by Tex. Occ. Code Ann. §501.260(c).

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks has also 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 to help the Board protect the public. There will be no economic costs to persons required to comply with this rule. There will be no effect on small businesses or local economies.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701 within 30 days of publication of this proposal in the Texas Register. Comments may also be submitted via fax to (512) 305-7701 or via email to brenda@tsbep.texas.gov.

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§465.2. Supervision.

(a) Supervision in General. The following rules apply to all supervisory relationships.

(1) A licensee is responsible for the supervision of all individuals that the licensee employs or utilizes to provide psychological services of any kind.

(2) Licensees ensure that their supervisees have legal authority to provide psychological services.

(3) Licensees delegate only those responsibilities that supervisees may legally and competently perform.

(4) All individuals who receive psychological services requiring informed consent from an individual under supervision must be informed in writing of the supervisory status of the individual and how the patient or client may contact the supervising licensee directly.

(5) All materials relating to the practice of psychology, upon which the supervisee's name or signature appears, must indicate the supervisory status of the supervisee. Supervisory status must be indicated by one of the following:

(A) Supervised by (name of supervising licensee);

(B) Under the supervision of (name of supervising licensee);

(C) The following persons are under the supervision of (name of supervising licensee); or

(D) Supervisee of (name of supervising licensee).

(6) Licensees provide an adequate level of supervision to all individuals under their supervision according to accepted professional standards given the experience, skill and training of the supervisee, the availability of other qualified licensees for consultation, and the type of psychological services being provided.

(7) Licensees utilize methods of supervision that enable the licensee to monitor all delegated services for legal, competent, and ethical performance. Methods of supervision may include remote or electronic means if:

(A) adequate supervision can be provided through remote or electronic means;

(B) the difficulties in providing full-time in-person supervision place an unreasonable burden on the delivery of psychological services; and

(C) no more than fifty percent of the supervision takes place through remote or electronic means.

(8) Licensees must be competent to perform any psychological services being provided under their supervision.

(9) Licensees shall document their supervision activities in writing, including any remote or electronic supervision provided. Documentation shall include the dates, times, and length of supervision.

(10) Licensees may only supervise the number of supervisees for which they can provide adequate supervision.

(b) Supervision of Students, Interns, Residents, Fellows, and Trainees. The following rules apply to all supervisory relationships involving students, interns, residents, fellows, and trainees.

(1) Unlicensed individuals providing psychological services pursuant to §§501.004(a)(2), 501.252(b)(2), or 501.260(b)(3) of the Act must be under the supervision of a qualified supervising licensee at all times.

(2) Supervision must be provided by a qualified supervising licensee before it will be accepted for licensure purposes.

(3) A licensee practicing under a restricted status license is not qualified to, and shall not provide supervision for a person seeking to fulfill internship or practicum requirements, or a person seeking licensure under the Psychologists' Licensing Act, regardless of the setting in which the supervision takes place, unless authorized to do so by the Board. A licensee shall inform all supervisees of any Board order restricting their license and assist the supervisees with finding appropriate alternate supervision.

(4) A supervisor must document in writing their supervisee's performance during a practicum, internship, or period of supervised experience required for licensure. The supervisor must provide this documentation to the supervisee.

(5) An individual subject to this subsection may allow a supervisee, as part of a required practicum, internship, or period of supervised experience required for licensure with this Board, to supervise others in the delivery of psychological services.

(6) For provisional trainees, a supervisor must provide at least one hour of individual supervision per week and may reduce the amount of weekly supervision on a proportional basis for provisional trainees working less than full-time.

(7) Licensees may not supervise an individual to whom they are related within the second degree of affinity or consanguinity.

(c) Supervision of Provisionally Licensed Psychologists and Licensed Psychological Associates. The following rules apply to all supervisory relationships involving Provisionally Licensed Psychologists and Licensed Psychological Associates.

(1) Provisionally Licensed Psychologists and Licensed Psychological Associates must be under the supervision of a Licensed Psychologist and may not engage in independent practice.

(2) A Provisionally Licensed Psychologist who is licensed in another state to independently practice psychology and is in good standing in that state, and who has applied for licensure as a psychologist may during the time that the Board is processing the applicant's

application for licensure as a psychologist, practice psychology without supervision. However, upon notification from the Board that an applicant has not met the qualifications for licensure as a psychologist, the provisionally licensed psychologists must obtain supervision within 30 days in order to continue to practice.

(3) A provisionally licensed psychologist may, as part of a period of supervised experience required for full licensure with this Board, supervise others in the delivery of psychological services.

(4) A supervisor must provide at least one hour of individual supervision per week. A supervisor may reduce the amount of weekly supervision on a proportional basis for supervisees working less than full-time.

(d) Supervision of Licensed Specialists in School Psychology interns and trainees. The following rules apply to all supervisory relationships involving Licensed Specialists in School Psychology, as well as all interns and trainees working toward licensure as a specialist in school psychology.

(1) A supervisor must provide an LSSP trainee with at least one hour of supervision per week, with no more than half being group supervision. A supervisor may reduce the amount of weekly supervision on a proportional basis for trainees working less than full-time.

(2) Supervision within the public schools may only be provided by a Licensed Specialist in School Psychology, who has a minimum of three years of experience providing psychological services within the public school system without supervision. To qualify, a licensee must be able to show proof of their license, credential, or authority to provide unsupervised school psychological services in the jurisdiction where those services were provided, along with documentation from the public school(s) evidencing delivery of those services.

(3) Supervisors must sign educational documents completed for students by the supervisee, including ~~student progress reports for which the supervisee is providing psychological or counseling services,~~ student evaluation reports, or similar professional reports to consumers, other professionals, or other audiences. It is not a violation of this rule if supervisors do not sign documents completed by a committee reflecting the deliberations of an educational meeting for an individual student which the supervisee attended and participated in as part of the legal proceedings required by federal and state education laws, unless the supervisor also attended and participated in such meeting.

(4) Supervisors shall document all supervision sessions. This documentation must include information about the duration of sessions, as well as the focus of discussion or training. The documentation must also include information regarding:

- (A) any contracts or service agreements between the public school district and university school psychology training program;
- (B) any contracts or service agreements between the public school district and the supervisee;
- (C) the supervisee's professional liability insurance coverage, if any;
- (D) any training logs required by the school psychology training program; and
- (E) the supervisee's trainee or licensure status.

(5) Supervisors must ensure that each individual completing any portion of the internship required by Board rule 463.9, is provided with a written agreement that includes a clear statement of the

expectations, duties, and responsibilities of each party, including the total hours to be performed by the intern, benefits and support to be provided by the supervisor, and the process by which the intern will be supervised and evaluated.

(6) Supervisors must ensure that supervisees have access to a process for addressing serious concerns regarding a supervisee's performance. The process must protect the rights of clients to receive quality services, assure adequate feedback and opportunities for improvement to the supervisee, and ensure due process protection in cases of possible termination of the supervisory relationship.

(e) The various parts of this rule should be construed, if possible, so that effect is given to each part. However, where a general provision conflicts with a more specific provision, the specific provision shall control.

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-201602979

Darrel D. Spinks
Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: July 31, 2016

For further information, please call: (512) 305-7706



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. MISCELLANEOUS PROVISIONS SUBCHAPTER K. DEFINITION, TREATMENT, AND DISPOSITION OF SPECIAL WASTE FROM HEALTH CARE-RELATED FACILITIES

25 TAC §§1.132 - 1.137

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§1.132 - 1.137, concerning the definition, treatment, and disposition of special waste from health care-related facilities.

BACKGROUND AND PURPOSE

The rule amendments provide language and offer clarification to enhance the understanding of the rules, as well as to update outdated references, terminology, and methods. Government Code, §2001.039 requires a review of rules, including an assessment of whether the reasons for initially adopting the rules continue to exist. Chapter 1, Subchapter K of Title 25 of the Texas Administrative Code was originally adopted in 1989, and amendments were made in 1991 and 1994. Additionally, the department has reviewed §§1.131 - 1.137 and has determined that the reasons for adopting the rules continue to exist because the rules on this subject are needed. However, there are no changes being proposed to §1.131 in this rulemaking.

SCOPE OF THE PROPOSED RULES

The scope of the proposed rules encompasses the following provisions of the rules in Subchapter K of Chapter 1, Miscellaneous Provisions, relating to special waste from health care-related facilities:

§1.132 Definitions.

§1.133 Scope, Covering Exemptions and Minimum Parametric Standards for Waste Treatment Technologies Previously Approved by the Texas Department of Health.

§1.134 Application.

§1.135 Performance Standards for Commercially-Available Alternate Treatment Technologies for Special Waste from Health Care-Related Facilities.

§1.136 Approved Methods of Treatment and Disposition.

§1.137 Enforcement.

SECTION-BY-SECTION SUMMARY

Amendments to §1.132, Definitions, are proposed to update references to the department; define the terms cremation, executive commissioner, and fetal tissue; remove the definition for the term cremated remains; update references to Texas Commission on Environmental Quality (TCEQ); correct a mathematical unit for "log₁₀," and necessitates the renumbering of paragraphs.

Amendments to §1.133, Scope, Covering Exemptions and Minimum Parametric Standards for Waste Treatment Technologies Previously Approved by the Texas Department of Health, are proposed to update references to the department and a legal reference.

Amendments to §1.134, Application, are proposed to update references to facilities providing mental health and intellectual disability services; and add freestanding emergency medical care facilities to the list of health care-related facilities to which this rule applies.

Amendments to §1.135, Performance Standards for Commercially-Available Alternate Treatment Technologies for Special Waste from Health Care-Related Facilities, are proposed to update references to the department and correct a mathematical unit to "log₁₀."

Amendments to §1.136, Approved Methods of Treatment and Disposition, are proposed to update references to the department; update terminology regarding the Texas Administrative Code; update references to TCEQ and its rules; clarifying disposition methods for fetal tissue; clarifying disposition methods for fetal tissue and other tissues that are products of spontaneous or induced human abortion; and clarifying that disposition methods for anatomical remains are established in 25 TAC §479.4.

Amendments to §1.137, Enforcement, are proposed to reflect the Executive Commissioner's role in rulemaking; remove home and community support services agencies from the list of the department's regulatory programs; and add end-stage renal disease facilities and freestanding emergency medical centers to the list of the department's regulatory programs.

FISCAL NOTE

Renee Clack, Director, Health Care Quality Section, has determined that for each year of the first five years that the sections will be in effect, there will not be fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS AND ECONOMIC COSTS TO PERSONS

Ms. Clack has also determined that the department has identified a potential fiscal impact but does not have information sufficient to quantify the impact as the proposed changes to the rules reflect disposition methods that were previously available. It is presumed that there was a cost to all of the previously available disposition methods and the department has no information to suggest that the cost of implementing the proposed changes would result in any greater cost to small and micro businesses or to persons who are required to comply with the rules.

IMPACT ON LOCAL EMPLOYMENT

There is no anticipated impact on local employment.

PUBLIC BENEFIT

Ms. Clack has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of adopting and enforcing these rules will be enhanced protection of the health and safety of the public.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

The department has determined that the 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 Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Allison Hughes, Health Facilities Rules Coordinator, Health Care Quality Section, Division of Regulatory Services, Department of State Health Services, Mail Code 2822, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6775 or by email to allison.hughes@dshs.state.tx.us. Please specify "Comments on special waste from health care-related facilities" in the subject line. The department intends by this section to invite public comment on each of the amendments to the rules. Comments are accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The amendments are authorized by Government Code, §531.0055, Health and Safety Code, §12.001, and Health and Safety Code, §1001.075, which authorize the Executive

Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The amendments are also authorized by Health and Safety Code, §81.004, which authorizes the Executive Commissioner to adopt rules necessary for the effective administration of Health and Safety Code, Chapter 81, concerning the control of communicable disease; by Health and Safety Code, Chapter 241, concerning the licensing of hospitals; by Chapter 243, concerning the licensing of ambulatory surgical centers; by Chapter 244, concerning the licensing of birthing centers; by Chapter 245, concerning the licensing of abortion facilities; by Chapter 251, concerning the licensing of end stage renal disease facilities; by Chapter 254, concerning the licensing of freestanding emergency medical care facilities; and by Chapter 773, concerning the licensing of emergency medical services. Review of the rules implements Government Code, §2001.039.

The amendments implement Government Code, Chapter 531; and Health and Safety Code, Chapters 12, 81, 241, 243, 244, 245, 251, 254 and 773.

§1.132. *Definitions.*

The following words and terms, when used in this subchapter [undesignated head], shall have the following meanings unless the context clearly indicates otherwise.

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

(3) Approved alternate treatment process--A process for waste treatment which has been approved by the department [Texas Department of Health] in accordance with §1.135 of this title (relating to Performance Standards for Commercially-Available Alternate Treatment Technologies for Special Waste from Health Care-Related Facilities).

(4) - (17) (No change.)

(18) Cremation--The irreversible process of reducing tissue or remains to ashes or bone fragments through extreme heat and evaporation.

~~[(18) Cremated remains--The bone fragments remaining after the cremation process, which may include the residue of any foreign materials that were cremated with the pathological waste.]~~

(19) - (26) (No change.)

(27) Executive Commissioner--In this title, Executive Commissioner means the Executive Commissioner of the Health and Human Services Commission.

(28) Fetal Tissue--A fetus, body parts, organs or other tissue from a pregnancy. This term does not include the umbilical cord, placenta, gestational sac, blood or body fluids.

(29) [(27)] Grave--A space of ground in a burial park that is used, or intended to be used for the permanent interment in the ground of pathological waste.

(30) [(28)] Grinding--That physical process which pulverizes materials, thereby rendering them as unrecognizable, and for sharps, reduces the potential for the material to cause injuries such as puncture wounds.

(31) [(29)] Immersed--A process in which waste is submerged fully into a liquid chemical agent in a container, or that a sufficient volume of liquid chemical agent is poured over a containerized waste, such that the liquid completely surrounds and covers the waste item(s) in the container.

(32) [(30)] Incineration--That process of burning SWFHCRF in an incinerator as defined in 30 TAC Chapter 101 under conditions in conformance with standards prescribed in 30 TAC Chapter 111 by the Texas Commission on Environmental Quality [Texas Natural Resource Conservation Commission].

(33) [(31)] Interment--The disposition of pathological waste by cremation, entombment, burial, or placement in a niche.

(34) [(32)] Log_{10} [~~Log~~_{sub}10/~~sub~~]~~--~~Logarithm to the base ten.

(35) [(33)] Log_{10} [~~Log~~_{sub}10/~~sub~~] reduction--A mathematically defined unit used in reference to level or degree of microbial inactivation. A 4 log_{10} [~~log~~_{sub}10/~~sub~~] reduction represents a 99.99% reduction in the numbers of active microorganisms, while a 6 log_{10} [~~log~~_{sub}10/~~sub~~] reduction represents a 99.9999% reduction in the numbers of active microorganisms.

(36) [(34)] Mausoleum--A structure or building of most durable and lasting fireproof construction used, or intended to be used, for the entombment pathological waste.

(37) [(35)] Microbial inactivation--Inactivation of vegetative bacteria, fungi, lipophilic/hydrophilic viruses, parasites, and mycobacteria at a 6 log_{10} [~~log~~_{sub}10/~~sub~~] reduction or greater; and inactivation of Bacillus subtilis endospores or Bacillus stearothermophilus endospores at a 4 log_{10} [~~log~~_{sub}10/~~sub~~] reduction or greater.

(38) [(36)] Microbiological waste--Microbiological waste includes:

(A) discarded cultures and stocks of infectious agents and associated biologicals;

(B) discarded cultures of specimens from medical, pathological, pharmaceutical, research, clinical, commercial, and industrial laboratories;

(C) discarded live and attenuated vaccines, but excluding the empty containers thereof;

(D) discarded, used disposable culture dishes; and

(E) discarded, used disposable devices used to transfer, inoculate or mix cultures.

(39) [(37)] Moist heat disinfection--The subsection of:

(A) internally shredded waste to moist heat, assisted by microwave radiation under those conditions which effect disinfection; or

(B) unshredded waste in sealed containers to moist heat, assisted by low-frequency radiowaves under those conditions which effect disinfection, followed by shredding of the waste to the extent that the identity of the waste is unrecognizable.

(40) [(38)] Niche--A recess or space in a columbarium used, or intended to be used, for the permanent interment of the cremated remains of pathological waste.

(41) [(39)] Parametric controls--Measurable standards of equipment operation appropriate to the treatment equipment including, but not limited to pressure, cycle time, temperature, irradiation dosage, pH, chemical concentrations, or feed rates.

(42) [(40)] Pathological waste--Pathological waste includes but is not limited to:

(A) human materials removed during surgery, labor and delivery, autopsy, embalming, or biopsy, including:

(i) body parts;

- (ii) tissues or fetuses;
- (iii) organs; and
- (iv) bulk blood and body fluids;

(B) products of spontaneous or induced human abortions, regardless of the period of gestation, including:

- (i) body parts;
- (ii) tissues or fetuses;
- (iii) organs; and
- (iv) bulk blood and body fluids;

(C) laboratory specimens of blood and tissue after completion of laboratory examination; and

(D) anatomical remains.

(43) [(41)] Saturated--Thoroughly wet such that liquid or fluid flows freely from an item or surface without compression.

(44) [(42)] Sharps--Sharps include, but are not limited to the following materials:

(A) when contaminated:

- (i) hypodermic needles;
- (ii) hypodermic syringes with attached needles;
- (iii) scalpel blades;
- (iv) razor blades, disposable razors, and disposable

scissors used in surgery, labor and delivery, or other medical procedures;

(v) intravenous stylets and rigid introducers (e.g., J wires);

(vi) glass pasteur pipettes, glass pipettes, specimen tubes, blood culture bottles, and microscope slides;

(vii) broken glass from laboratories; and

(viii) tattoo needles, acupuncture needles, and electrolysis needles;

(B) regardless of contamination:

- (i) hypodermic needles; and
- (ii) hypodermic syringes with attached needles.

(45) [(43)] Shredding--That physical process which cuts, slices, or tears materials into small pieces.

(46) [(44)] Special waste from health care-related facilities--A solid waste which if improperly treated or handled may serve to transmit an infectious disease(s) and which is comprised of the following:

- (A) animal waste;
- (B) bulk blood, bulk human blood products, and bulk human body fluids;
- (C) microbiological waste;
- (D) pathological waste; and
- (E) sharps.

(47) [(45)] Steam disinfection--The act of subjecting waste to steam under pressure under those conditions which effect disinfection. This was previously called steam sterilization.

(48) [(46)] Thermal inactivation--The act of subjecting waste to dry heat under those conditions which effect disinfection.

(49) [(47)] Unrecognizable--The original appearance of the waste item has been altered such that neither the waste nor its source can be identified.

§1.133. *Scope, Covering Exemptions and Minimum Parametric Standards for Waste Treatment Technologies Previously Approved by the Texas Department of State Health Services.*

(a) Exemptions.

(1) (No change.)

(2) These sections do not apply to:

(A) (No change.)

(B) human tissue, including fetal tissue, donated for research or teaching purposes, with the consent of the person authorized to consent as otherwise provided by law, to an institution of higher learning, medical school, a teaching hospital affiliated with a medical school, or to a research institution or individual investigator subject to the jurisdiction of an institutional review board required by 42 United States Code [Codes] 289;

(C) - (F) (No change.)

(b) Minimum parametric standards for waste treatment technologies previously approved by the department [Texas Department of Health].

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

§1.134. *Application.*

These sections apply to special waste from health care-related facilities generated by the operation of the following publicly or privately owned or operated health care-related facilities, including but not limited to:

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

(12) freestanding emergency medical care facilities;

(13) [(12)] funeral establishments;

(14) [(13)] home and community support services agencies;

(15) [(14)] hospitals;

(16) [(15)] long term care facilities;

(17) [(16)] facilities providing mental health and intellectual disability services, [mental health and mental retardation facilities,] including but not limited to hospitals, schools, and community centers;

(18) [(17)] minor emergency centers;

(19) [(18)] occupational health clinics and clinical laboratories;

(20) [(19)] pharmacies;

(21) [(20)] pharmaceutical manufacturing plants and research laboratories;

(22) [(21)] professional offices, including but not limited to the offices of physicians, [and] dentists, and acupuncturists;

(23) [(22)] special residential care facilities;

(24) [(23)] tattoo studios; and

(25) [(24)] veterinary clinical and research laboratories.

§1.135. *Performance Standards for Commercially-Available Alternate Treatment Technologies for Special Waste from Health Care-Related Facilities.*

All manufacturers of commercially-available alternate technologies, equipment, or processes designed or intended for the treatment of special waste from health care-related facilities, except those meeting the standards of §1.133(b) of this title (relating to Scope, Covering Exemptions and Minimum Parametric Standards for Waste Treatment Technologies Previously Approved by the Texas Department of State Health Services), shall apply to the department [~~Texas Department of Health (department)~~] on forms prescribed by the department for approval of said technologies, equipment, or processes to ensure that established performance standards are met.

(1) Levels of microbial inactivation.

(A) (No change.)

(B) All manufacturers of commercially-available alternate technologies, equipment, or processes designed and intended for the treatment of special waste from health care-related facilities shall provide specific laboratory evidence that demonstrates:

(i) inactivation of representative samples of vegetative bacteria, mycobacteria, lipophilic/hydrophilic viruses, fungi, and parasites at a level of $6 \log_{10}$ [~~\log_{10}~~] reduction or greater, as determined by the department; and

(ii) inactivation of *Bacillus stearothermophilus* endospores or *Bacillus subtilis* endospores at a level of $4 \log_{10}$ [~~\log_{10}~~] reduction or greater, as determined by the department.

(C) - (E) (No change.)

(2) Documentation requirements.

(A) (No change.)

(B) Documentation must be submitted to the department [~~Texas Department of Health, Bureau of Environmental Health~~] on [~~those~~] forms provided by the department.

(3) - (4) (No change.)

§1.136. *Approved Methods of Treatment and Disposition.*

(a) Introduction. The following treatment and disposition methods for special waste from health care-related facilities are approved by the department [~~Texas Board of Health (board)~~] for the waste specified. Where a special waste from a health care-related facility is also subject to the sections in Chapter 289 of this title (relating to Radiation Control), the sections in Chapter 289 shall prevail over the sections in this subchapter [~~undesignated head~~]. Disposal of special waste from health care-related facilities in sanitary landfills or otherwise is under the jurisdiction of the Texas Commission on Environmental Quality [~~Texas Natural Resource Conservation Commission~~] and is governed by its rules found in 30 TAC Chapter 326 (relating to Medical Waste Management) and Chapter 330 (relating to Municipal Solid Waste) [~~Title 30, Texas Administrative Code, Chapter 330~~].

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

(3) Microbiological waste. Microbiological waste shall be subjected to one of the following methods of treatment and disposal.

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

(D) Discarded disposable culture dishes shall be subjected to one of the following methods of treatment and disposal.

(i) All discarded, unused disposable culture dishes shall be disposed of in accordance with 30 TAC Chapters 326 and 330 [~~Title 30, Texas Administrative Code, Chapter 330~~].

(ii) (No change.)

(E) (No change.)

(4) Pathological waste. Pathological waste shall be subjected to one of the following methods of treatment and disposal.

(A) Human materials removed during surgery, labor and delivery, autopsy, embalming, or biopsy shall be subjected to one of the following methods of treatment and disposal:

(i) body parts, other than fetal tissue:

(I) interment;

(II) incineration followed by deposition of the residue in a sanitary landfill;

(III) steam disinfection followed by interment;

(IV) moist heat disinfection, provided that the grinding/shredding renders the item as unrecognizable, followed by deposition in a sanitary landfill;

(V) chlorine disinfection/maceration, provided that the grinding/shredding renders the item as unrecognizable, followed by deposition in a sanitary landfill; or

(VI) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill;

(ii) tissues, other than fetal tissue [~~or fetuses~~]:

(I) incineration followed by deposition of the residue in a sanitary landfill;

(II) grinding and discharging to a sanitary sewer system;

(III) interment;

(IV) steam disinfection followed by interment;

(V) moist heat disinfection followed by deposition in a sanitary landfill;

(VI) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(VII) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill;

(iii) organs, other than fetal tissue:

(I) incineration followed by deposition of the residue in a sanitary landfill;

(II) grinding and discharging to a sanitary sewer system;

(III) interment;

(IV) steam disinfection followed by interment;

(V) moist heat disinfection followed by deposition in a sanitary landfill;

(VI) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(VII) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill;

(iv) bulk human blood and bulk human body fluids removed during surgery, labor and delivery, autopsy, embalming, or biopsy:

(I) discharging into a sanitary sewer system;

(II) steam disinfection followed by deposition in a sanitary landfill;

(III) incineration followed by deposition of the residue in a sanitary landfill;

(IV) thermal inactivation followed by deposition in a sanitary landfill;

(V) thermal inactivation followed by grinding and discharging into a sanitary sewer system;

(VI) chemical disinfection followed by deposition in a sanitary landfill;

(VII) chemical disinfection followed by grinding and discharging into a sanitary sewer system;

(VIII) moist heat disinfection followed by deposition in a sanitary landfill;

(IX) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(X) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill;[-]

(v) fetal tissue, regardless of the period of gestation:

(I) interment;

(II) cremation;

(III) incineration followed by interment; or

(IV) steam disinfection followed by interment.

(B) The products of spontaneous or induced human abortion shall be subjected to one of the following methods of treatment and disposal:

(i) fetal tissue, [body parts, tissues, or organs] regardless of the period of gestation:

~~(I) grinding and discharging to a sanitary sewer system;]~~

~~(I) [(H)] incineration followed by interment [deposition of the residue in a sanitary landfill];~~

~~(II) [(H)] steam disinfection followed by interment;~~

~~(III) [(IV)] interment; or~~

~~(IV) cremation;~~

~~(V) moist heat disinfection followed by deposition in a sanitary landfill;]~~

~~(VI) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or]~~

~~(VII) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill;]~~

(ii) blood and body fluids:

(I) discharging into a sanitary sewer system;

(II) steam disinfection followed by deposition in a sanitary landfill;

(III) incineration followed by deposition of the residue in a sanitary landfill;

(IV) thermal inactivation followed by deposition in a sanitary landfill;

(V) thermal inactivation followed by grinding and discharging into a sanitary sewer system;

(VI) chemical disinfection followed by deposition in a sanitary landfill;

(VII) chemical disinfection followed by grinding and discharging into a sanitary sewer system;

(VIII) moist heat disinfection followed by deposition in a sanitary landfill;

(IX) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(X) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill;

(iii) any other tissues, including placenta, umbilical cord and gestational sac:

(I) grinding and discharging to a sanitary sewer system;

(II) incineration followed by deposition of the residue in a sanitary landfill;

(III) steam disinfection followed by interment;

(IV) interment;

(V) moist heat disinfection followed by deposition in a sanitary landfill;

(VI) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(VII) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill.

(C) Discarded laboratory specimens of blood and/or tissues shall be subjected to one of the following methods of treatment and disposal:

(i) grinding and discharging into a sanitary sewer system;

(ii) steam disinfection followed by deposition in a sanitary landfill;

(iii) steam disinfection followed by grinding and discharging into a sanitary sewer system;

(iv) incineration followed by deposition of the residue in a sanitary landfill;

(v) moist heat disinfection followed by deposition in a sanitary landfill;

(vi) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(vii) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill.

(D) Anatomical remains shall be disposed of in a manner specified by §479.4 of this title (relating to Final Disposition of the Body and Disposition of Remains). [subjected to one of the following methods of treatment and disposal:]

~~{(i) interment;}~~

~~{(ii) incineration followed by interment; or}~~

~~{(iii) steam disinfection followed by interment.}~~

(5) Sharps.

(A) All discarded unused sharps shall be disposed of in accordance with 30 TAC Chapters 326 and 330 [Title 30, Texas Administrative Code, Chapter 330].

(B) (No change.)

(b) Records. The facility treating the wastes shall maintain records to document the treatment of the special waste from health care-related facilities processed at the facility as to method and conditions of treatment in accordance with 30 TAC [Title 30, Texas Administrative Code,] Chapter 326 [330].

(c) (No change.)

§1.137. *Enforcement.*

The appropriate regulatory programs of the department shall incorporate the definition and methodology contained in these provisions into their respective general program rules and shall formulate and present for the Executive Commissioner's [board's] consideration such additional rules as are necessary for the internal collection, storage, handling, movement, and treatment of special waste from health care-related facilities generated within or by the following facilities or activities:

- (1) abortion clinics;
- (2) ambulatory surgical centers;
- (3) birthing centers;
- (4) emergency medical service providers;
- (5) end stage renal disease facilities;
- (6) freestanding emergency medical care facilities;
- ~~{(5) home and community support services agencies;}~~
- (7) ~~{(6)}~~ hospitals;
- (8) ~~{(7)}~~ special residential care facilities; and
- (9) ~~{(8)}~~ tattoo studios.

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 20, 2016.

TRD-201603119

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: July 31, 2016

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



CHAPTER 169. ZOONOSIS CONTROL SUBCHAPTER B. CARE OF ANIMALS BY CIRCUSES, CARNIVALS, AND ZOOS

25 TAC §§169.41 - 169.48

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §§169.41 - 169.48, concerning the care of animals by circuses, carnivals, and zoos.

BACKGROUND AND PURPOSE

Texas Occupations Code, Chapter 2152, "Regulation of Circuses, Carnivals, and Zoos," §§2152.051 - 2152.054, provided the Executive Commissioner of the Health and Human Services Commission with the authority to adopt standards for the operation of circuses, carnivals, and zoos, prescribe qualifications for its inspection agents, and prescribe the amount of each fee required by this chapter. Senate Bill (SB) 219, 84th Texas Legislature, Regular Session, 2015, repealed Texas Occupations Code, Chapter 2152. Therefore, §§169.41 - 169.48 are no longer required due to the repeal of the authorizing statute.

SECTION-BY-SECTION SUMMARY

The repeal of §§169.41 - 169.48 is necessary because SB 219 repealed Texas Occupations Code, Chapter 2152, which was the legal mandate for these rules.

FISCAL NOTE

Ms. Imelda Garcia, Director, Infectious Disease Prevention Section, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of repealing the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Garcia has also determined that there will be no adverse impact on small businesses or micro-businesses required to comply with the sections as proposed because the sections are no longer necessary. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the proposed repeal of the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the proposed repeal of the sections. There will be no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Garcia has determined that for each year of the first five years the repeal of the sections is in effect, the public will benefit from the adoption of the repeals. The public benefit anticipated is to eliminate possible confusion caused by outdated policies and procedures being presented in the rules and by rules for which there is no longer statutory authority being located in the Texas Administrative Code.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment

or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the 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 Government Code, §2007.043.

COMMENT

Comments on the proposal may be submitted to Tom Sidwa, DVM, MPH, Department of State Health Services, Infectious Disease Prevention Section, Zoonosis Control Branch, Mail Code 1956, P.O. Box 149347, Austin, Texas 78714-9347, or by email to Tom.Sidwa@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The repeals are authorized under Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to make decisive actions on rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The repeals affect Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

§169.41. *Purpose.*

§169.42. *Definitions.*

§169.43. *Facilities for Housing the Animals.*

§169.44. *Transportation of Animals.*

§169.45. *Food and Water Requirements in Transit.*

§169.46. *Care in Transit.*

§169.47. *Licenses.*

§169.48. *State Inspection Agents.*

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 15, 2016.

TRD-201603037

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: July 31, 2016

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



PART 4. ANATOMICAL BOARD OF THE STATE OF TEXAS

CHAPTER 477. DISTRIBUTION OF BODIES

25 TAC §§477.1, 477.2, 477.4, 477.5, 477.7

The Anatomical Board of the State of Texas (Board) proposes to amend §§477.1, 477.2, 477.4, 477.5, and 477.7, concerning the rules and procedures for the distribution of cadavers and/or anatomical specimens to recognized search organizations.

The Board's proposed amendments are to implement Health and Safety Code §691.030 and §692A.011 as amended by Senate Bill 1214 in the 84th Legislative Session. The amendments to §691.030 and §692A.011 provide that the use of cadavers and/or anatomical specimens by recognized search organizations must be coordinated through the Anatomical Board of the State of Texas.

The amendment to §477.1 defines the term "search organizations" to be organizations described in §691.030(a)(3) of the Health and Safety Code.

Amendments to §477.2 necessitate that search organizations meet the requirements described in §691.030(a)(3) of the Health and Safety Code.

Amendments to §477.4 set forth the circumstances under which a cadaver or anatomical specimen may be transferred to a recognized search organization.

Amendments to §477.5 relate to the procedure for a recognized search organization to request transfer of cadavers and/or anatomical specimens, the procedure for approval of the transfer, availability of cadavers and/or anatomical specimens, and the procedure for return of cadavers and/or anatomical specimens.

The amendment to §477.7 requires a recognized search organization receiving cadavers and/or anatomical specimens to file a yearly cadaver procurement and use report.

Vaughan Lee, Chairman of the State Anatomical Board, has determined that for each fiscal year of the first five years the sections are in effect, there will be no fiscal implications to the state as a result of enforcing or administering the sections as proposed.

Dr. Lee has also determined that there are no anticipated economic costs to small businesses or micro-businesses required to comply with the sections as proposed.

Dr. Lee has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit as a result of enforcing or administering the sections is to effectively regulate the disposition of bodies in Texas, all of which will protect and promote public health, safety, and welfare.

Comments on the proposal may be submitted in writing either in person or by courier to Stephen Luk, Secretary-Treasurer, Anatomical Board of the State of Texas, P.O. Box 20745, Houston, Texas 77225-0745. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The proposed amendments are authorized by the Board's general rulemaking power under Health and Safety Code §691.022(b).

The proposed amendments affect the Texas Administrative Code, Title 25, Chapter 477.

§477.1. *Definition and Jurisdiction of the Board.*

(a) Definitions [~~Definition~~].

(1) Whenever the terms human "body" or "bodies" or "parts of human body" or "parts of human bodies" are used in Chapters 477 - 485, the terms include anatomical specimens, defined as parts of a human corpse in §691.001 of the Health and Safety Code.

(2) Whenever the term "search organization" is used in Chapters 477 - 485, the term includes search and rescue organizations and recovery teams that use human remains detection canines as described in §691.030(a)(3) of the Health and Safety Code.

(b) (No change.)

§477.2. *Institutional Requirements.*

(a) Institution accreditation. Institutions applying to be authorized to receive and hold bodies, or parts thereof, must show evidence of accreditation by the accrediting board for that profession. This applies to tissue banks authorized to receive donations under Chapter 692A of the Health and Safety Code[, Chapter 692A]. Search organizations must show evidence that they fulfill the requirements described in §691.030(a)(3) of the Health and Safety Code.

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

§477.4. *Transport, Importation and Exportation of Bodies.*

(a) Transport of Bodies. The transfer and transport of bodies or anatomical specimens from one institution to another, or for export from the state, shall be done in an appropriate, secured vehicle operated by a licensed funeral establishment, ambulance service, member institution, search organization, or public carrier. A label with the statement "CONTENTS DERIVED FROM DONATED HUMAN TISSUE" shall be affixed to the container in which the body or anatomical specimen is transported. Violations may result in revocation of authorization to receive and hold bodies.

(b) Transfer to search organizations. Cadavers and anatomical specimens may be transferred to search organizations or forensic science programs if:

(1) the deceased donated his body in compliance with Section 691.028 of the Health and Safety Code and at the time of the donation authorized use for search organizations or forensic science programs;

(2) the body was donated in compliance with Chapter 692A of the Health and Safety Code and the person authorized to make the donation under Section 692A.009 authorized use for search organizations or forensic science programs;

(3) the body was received by a member institution because it had not been claimed.

(c) [(b)] Importation. Notification of the intent to import a body or bodies from outside of the State of Texas shall be given to the board in writing. Such bodies shall fall under the jurisdiction of the board upon entering the State of Texas, and all rules regulating such material shall apply.

(d) [(e)] Exportation. No body under the jurisdiction of the board including donations to tissue banks authorized by Health and Safety Code, Chapter 692A, shall be shipped out of the State of Texas, unless permission in writing for such shipment has been granted by the board acting through its secretary-treasurer. If the secretary-treasurer is an employee of the institution that is to make the shipment, secondary approval must be given by the chair.

(1) The board may grant approval of exportation of a body if it or its secretary-treasurer or chair determines that:

(A) a written request has been received from an institution that is in the approved categories described in §479.1(a) of this title (relating to Institutions Authorized to Receive and Hold Bodies) that describes the need for the body and the facilities available for holding the body.

(B) the supply of bodies exceeds the needs of the institutions in this state; and

(C) the donor authorized out-of-state shipment.

(2) If, in the opinion of the appropriate official of the holding institution or the secretary-treasurer, a site visit to the requesting institution is desirable or necessary, such a visit shall be made and a report made to the secretary-treasurer before approving the transfer. The expenses incurred by such a site visit shall be reimbursed by the potential receiving institution before application is considered.

(e) [(d)] Proscription of local removal. Bodies shall not be removed or relocated from the designated premises of the institution or individual which have been authorized by this board to receive, hold, or dispose of bodies without the written permission of the secretary-treasurer.

(f) [(e)] Violation of this rule. Should it appear that an organization, institution, or individual may be in violation of any section regarding the transportation of a body, the board shall proceed as required by §483.1 of this title (relating to Hearing Procedures).

§477.5. *Transfer of Bodies.*

(a) Application for transfer. Institutions or search organizations desiring the transfer of a body [to their institution] must make written request to the secretary-treasurer of the board. Reasons for the need for a body must be stated.

(b) (No change.)

(c) Availability. While the secretary-treasurer of the board shall make diligent efforts to locate a source of bodies for transfer, final authorization for such transfer shall be dependent on the willingness of a member institution to provide the required body or bodies. Costs of the body and for transportation shall be borne by the institution or search organization receiving the transferred body.

(d) Disposal of transferred bodies. Unless other suitable arrangements have been made and approved by the secretary-treasurer or the board in advance, transferred bodies on which dissection has been completed shall be returned to the institution originally providing the body for final disposition within one calendar year.

(e) Extension. The secretary-treasurer may approve extensions beyond the one calendar year time limit. Written requests for an extension must be submitted prior to the expiration of the term, and reasons for the extension must be stated.

§477.7. *Board Forms.*

(a) (No change.)

(b) Yearly cadaver procurement and use report. Each institution which has received, directly or by transfer, and/or used a body during the prior year shall complete, sign and file with the secretary-treasurer the yearly cadaver procurement and use report prescribed by the board. This report shall be filed not later than August 31 of each year for the prior annual period August 1 through July 31. Tissue banks and search organizations receiving donations as authorized by Health and Safety Code Chapter 692A will file a cadaver procurement and transfer form as prescribed by the board.

(c) (No change.)

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

Filed with the Office of the Secretary of State on June 21, 2016.
TRD-201603138
Stephen Luk
Secretary-Treasurer
Anatomical Board of the State of Texas
Earliest possible date of adoption: July 31, 2016
For further information, please call: (214) 648-5469

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**CHAPTER 479. FACILITIES: STANDARDS
AND INSPECTIONS**

25 TAC §§479.1 - 479.3, 479.5

The Anatomical Board of the State of Texas (Board) proposes to amend §§479.1 - 479.3 and 479.5, concerning the rules and procedures for the distribution of cadavers and/or anatomical specimens to recognized search organizations.

The Board's proposed amendments are to implement Health and Safety Code §691.030 and §692A.011 as amended by Senate Bill 1214 in the 84th Legislative Session. The amendments to §691.030 and §692A.011 provide that the use of cadavers and/or anatomical specimens by recognized search organizations must be coordinated through the Anatomical Board of the State of Texas.

Amendments to §479.1 allow recognized search organizations and forensic science programs to receive and hold cadavers and/or anatomical specimens.

Amendments to §479.2 relate to the procedure for a search organization to apply to receive and hold cadavers and/or anatomical specimens. This section also relates to the inspection of the facilities of a search organization.

Amendments to §479.3 allow recognized search organizations and forensic science programs to use anatomical specimens in specific field locations provided that certain conditions are met.

Amendments to §479.5 provide a limited exception to Texas Penal Code §42.10 for recognized search organizations and forensic science programs to use human cadaveric materials for training purposes under strict circumstances.

Vaughan Lee, Chairman of the State Anatomical Board, has determined that for each fiscal year of the first five years the sections are in effect, there will be no fiscal implications to the state as a result of enforcing or administering the sections as proposed.

Dr. Lee has also determined that there are no anticipated economic costs to small businesses or micro-businesses required to comply with the sections as proposed.

Dr. Lee has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit as a result of enforcing or administering the sections is to effectively regulate the disposition of bodies in Texas, all of which will protect and promote public health, safety, and welfare.

Comments on the proposal may be submitted in writing either in person or by courier to Stephen Luk, Secretary-Treasurer, Anatomical Board of the State of Texas, P.O. Box 20745, Houston, Texas 77225-0745. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The proposed amendments are authorized by the Board's general rulemaking power under Health and Safety Code §691.022(b).

The proposed amendments affect the Texas Administrative Code, Title 25, Chapter 479.

§479.1. Institutions Authorized to Receive and Hold Bodies.

(a) Approved categories. Institutions or organizations authorized by the board to receive and hold bodies include accredited medical schools or colleges, dental schools or colleges, health science centers, hospitals, schools of mortuary science, chiropractic schools or colleges, osteopathic medical schools or colleges, search organizations, and forensic science programs. Tissue banks receiving donations under Health and Safety Code, Chapter 692A may only transfer those donations to institutions in approved categories.

(b) (No change.)

§479.2. Application and Inspection of Facilities.

(a) (No change.)

(b) Search organizations applying for authorization to receive and hold bodies have additional requirements:

(1) documents demonstrating authorization by a sponsoring local or county law enforcement agency for the search organization's use of human remains detection canines;

(2) documents demonstrating the search organization's exemption from federal taxation under 501(c) of the Internal Revenue Code of 1986;

(3) documents demonstrating the search organization's protocols for the handling and storage of bodies or parts thereof.

(c) [(b)] Inspection.

(1) The inspection team.

(A) New facilities. An inspection subcommittee of the board, composed of at least two members of the board, shall visit all new facilities, including any existing facilities that have undergone major renovation. Such inspections shall be made within 60 days of the receipt of a request for inspection.

(B) Inspection. Approved facilities. All approved facilities shall be reinspected from time to time on a periodic basis not more [less] than every five years by at least one member of the board from an institution other than the facility being inspected. Search organizations and forensic science programs utilizing WBP specimens shall be reinspected from time to time on a periodic basis not more than every three years. Advance notice of such reinspections shall be given.

(C) Facilities where deficiencies have been cited. All facilities which have been disapproved, or where a deficiency has been cited on inspection or reinspection, may be visited by a reinspection subcommittee composed of at least one member of the board from an institution other than the facility being reinspected. This reinspection, when deemed necessary, shall be made within 60 days of notice to the secretary-treasurer that the corrections have been accomplished. Advance notice of such reinspections shall be given.

(2) Reports of inspection and reinspection.

(A) Approved facilities. Where the inspection subcommittee finds no reason to deny approval of the inspected facilities, they so report in writing to the secretary-treasurer. Upon acceptance of the report by a majority of the board, the secretary-treasurer shall notify the institution concerned of such approval of its facilities and authorize it to receive and hold bodies.

(B) Disapproved facilities.

(i) Needed corrections cited in writing. When the inspection subcommittee notes deficiencies which require remedy before approval can be granted, they shall so report, in detail, in writing to the secretary-treasurer of the board, who shall notify the institution promptly of these deficiencies. It would be well if the inspection subcommittee discussed deficiencies found with the concerned institution personnel before departing from the site.

(ii) Requirement for immediate action. When an institution is advised of deficiencies uncovered by an inspection subcommittee, it is obligated to effect immediate correction of the deficiency or deficiencies. Delay in effecting the required corrections will delay granting approval of new facilities and may threaten continued approval of existing facilities.

(iii) Suspension of authorization. Unnecessary delay in making required correction(s) of deficiencies uncovered by inspection or reinspection may, by majority vote of the board, result in denial or withdrawal of approval of the facility and withholding or suspension of authorization to receive and hold bodies. Shall an organization, institution, or individual object to such determination by the board, it may request a hearing pursuant to §483.1 of this title (relating to Hearing Procedures).

(3) Costs of inspection and reinspection. All costs attendant on the program of inspection and reinspection shall be borne by the board.

§479.3. *Standards for Facilities.*

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

(c) Public welfare.

(1) Visibility. All areas where human bodies are handled must not be visible from the outside of the building or so located that the public has ready visibility of transport, preparation, or dissection in progress.

(2) Accessibility. All areas used for receipt and preparation, storage, or dissection of human bodies must be unaccessible and inadmissible to the general public and all unauthorized personnel. All areas must have appropriate locks. Only personnel concerned with the preparation of cadavers should have access to storage and preparation areas. Storage areas should be securely locked at all times when bodies are not being placed in or removed from storage. Search organizations and forensic science programs may use anatomical specimens in field locations provided that those locations are not accessible to the public, and access is restricted to search organization personnel while the anatomical specimens are in use.

§479.5. *Abuse of a Corpse.*

(a) Definition. Abuse of a corpse is defined in Texas Penal Code §42.10. In the code dissection in an authorized institution by authorized persons is specifically exempted from this provision. The board has determined:

(1) dissection of human cadaveric materials in health science, and related, education and research, and activities found by the board to be related to dissection (see paragraph (2) of this subsection)

are a special privilege and are legally authorized for members and students of the health, and related, professions for the purpose of the advancement of knowledge in these fields. Exercise of this authority is accompanied by solemn obligations to conduct all activities related to such dissection with respect and dignity. Authorized dissection shall take place under supervision of trained and qualified persons, and only in specified locations that have been approved by the board and which meet the standards set forth in §479.3 of this title (relating to Standards for Facilities). Bodies [bodies], or parts of a body, shall not be removed from the specified locations without permission of the board or of an authorized representative of the board;

(2) the following activities are integrally related to dissection:

(A) procurement of bodies:

(i) removal from the place of death, hospital, morgue, medical examiner's office, or mortuary; and transfer to a proper site for embalming;

(ii) transfer to storage site or dissecting facility approved by the board;

(B) distribution of bodies: removal from one storage site and transfer to another approved facility designated by the board;

(C) handling of bodies:

(i) embalming;

(ii) placement in storage;

(iii) removal from storage;

(iv) placement on dissecting table in a facility designated approved by the board;

(D) dissection: cutting or otherwise separating body components for the purpose of demonstrating or investigating structural relationships of tissues, organs, or systems.

(E) use of bodies in biomedical research: removal of body parts or constituents and subsection thereof to further manipulation for the purpose of advancing scientific knowledge;

(F) disposal of remains:

(i) removal from the dissecting table;

(ii) transfer to crematory or burial site;

(iii) cremation or burial;

(iv) final disposition of cremains.

(3) use of human cadaveric materials in training human remains detection canines and other forensic science procedures are a special privilege and are legally authorized for active members of search organizations and forensic science programs. Exercise of this authority is accompanied by solemn obligations to conduct all activities related to such training with respect and dignity. Authorized activities shall take place under supervision of trained and qualified persons, and only in specified locations that have been approved by the board and which meet the standards set forth in §479.3 of this title (relating to Standards for Facilities).

(b) (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 21, 2016.
TRD-201603139
Stephen Luk
Secretary-Treasurer
Anatomical Board of the State of Texas
Earliest possible date of adoption: July 31, 2016
For further information, please call: (214) 648-5469



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 23. VEHICLE INSPECTION SUBCHAPTER A. VEHICLE INSPECTION STATION AND VEHICLE INSPECTOR CERTIFICATION

37 TAC §§23.1, 23.3, 23.5

The Texas Department of Public Safety (the department) proposes amendments to §§23.1, 23.3, and 23.5, concerning Vehicle Inspection Station and Vehicle Inspector Certification. The amendments to §23.1 and §23.3 are intended to clarify that the issuance of a certification is conditional upon the criminal background check. The amendment to §23.5 addresses the rule's reference to Article 42.12(3g), Code of Criminal Procedure, which is repealed by House Bill 2299, 84th Legislative Session, effective January 1, 2017. The bill creates new Article 42A.054 to replace 42.12(3g).

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

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be greater clarity and consistency with legislative changes.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly,

the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246 or by email at <https://www.txdps.state.tx.us/rsd/contact/default.aspx>. Select "Vehicle Inspection". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce Chapter 548.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 are affected by this proposal.

§23.1. *New or Renewal Vehicle Inspection Station Applications.*

(a) Applicants for new or renewal vehicle inspection station certification must apply in a manner prescribed by the department.

(b) By submitting a new or renewal vehicle inspection station application form, the applicant agrees to allow the department to conduct background checks as authorized by law.

(c) A new or renewal vehicle inspection station application must include, but is not limited to, the items listed in paragraphs (1) - (3) of this subsection:

(1) Criminal history disclosure of all convictions and deferred adjudications for each owner or designee engaged in the regular course of business as a vehicle inspection station;

(2) Proof of ownership and current status as required by the department. Such proof includes, but is not limited to, a current Certificate of Existence or Certificate of Authority from the Texas Secretary of State and a Certificate of Good Standing from the Texas Comptroller of Public Accounts; and

(3) All fees required pursuant to Texas Transportation Code, Chapter 548 (the Act). The vehicle inspection station new and renewal application fee is nonrefundable.

(d) If an incomplete new or renewal vehicle inspection station application is received, notice will be sent to the applicant stating that the application is incomplete and specifying the information required for completion.

(e) The new or renewal vehicle inspection station applicant has 60 calendar days after receipt of notice to provide the required information and submit a complete application. If an applicant fails to furnish the documentation, the application will be considered withdrawn and a new application must be submitted.

(f) A new or renewal vehicle inspection station application is complete when:

(1) It contains all items required by the department.

(2) It conforms to the Act, this chapter and the Texas vehicle inspection program's instructions.

(3) All fees have been paid pursuant to the Act.

(4) All requests for additional information have been satisfied.

(g) The vehicle inspection station certificate will expire on August 31 of the odd numbered year following the date of issuance and is renewable every two years thereafter.

(h) A renewal of the vehicle inspection station certification issued by the department is conditional upon the receipt of criminal history record information.

(i) [(h)] For a new or renewal vehicle inspection station application to be approved, the owner must:

- (1) be at least 18 years of age;
- (2) provide proof of identification as required by the department;
- (3) not be currently suspended or revoked in the Texas vehicle inspection program;
- (4) complete department provided training;
- (5) have a facility that meets the standards for the appropriate class set forth in this chapter;
- (6) have equipment that meets the standards set forth in §23.13 of this title (relating to Equipment Requirements for All Classes of Vehicle Inspection Stations); and
- (7) meet all other eligibility criteria under the Act or this chapter.

(j) [(h)] Certificate holders of vehicle inspection stations must submit a new application, including applicable fees, in order to change a location, or make a change of ownership.

(k) [(j)] Applicants for new or renewal vehicle inspection station certification must apply for one of the classes defined in paragraphs (1) - (3) of this subsection:

- (1) Public--A station open to the public performing inspections on vehicles presented by the public. Stations open to the public will not be issued a fleet vehicle inspection station license unless such stations are currently certified as a public vehicle inspection stations;
- (2) Fleet--A station not providing vehicle inspection services to the public; or
- (3) Government--A station operated by a political subdivision, or agency of this state.

§23.3. *New or Renewal Vehicle Inspector Applications.*

(a) Applicants for a new or renewal vehicle inspector certificate must apply in a manner prescribed by the department.

(b) By submitting a new or renewal vehicle inspector application form, the applicant agrees to allow the department to conduct background checks as authorized by law.

(c) A new or renewal vehicle inspector application must include, but is not limited to, the items listed in paragraphs (1) and (2) of this subsection:

- (1) criminal history disclosure of all convictions and deferred adjudications of the vehicle inspector applicant; and
- (2) all fees required pursuant to Texas Transportation Code, Chapter 548 (the Act). The new or renewal vehicle inspector application fee is nonrefundable.

(d) If an incomplete new or renewal vehicle inspector application is received, notice will be sent to the applicant stating that the application is incomplete and specifying the information required for completion.

(e) The new or renewal vehicle inspector applicant has 60 calendar days after receipt of notice to provide the required information and submit a complete application. If an applicant fails to furnish the documentation, the application will be considered withdrawn.

(f) A new or renewal vehicle inspector application is complete when:

- (1) It contains all items required by the department.
- (2) It conforms to the Act, this chapter, and the Texas vehicle inspection program's instructions.
- (3) All fees have been paid pursuant to the Act.
- (4) All requests for additional information have been satisfied.

(g) The new or renewal vehicle inspector certificate will expire on August 31 of the even numbered year following the date of issuance and is renewable every two years thereafter.

(h) A renewal of the vehicle inspector certification issued by the department is conditional upon the receipt of criminal history record information.

(i) [(h)] For a new or renewal vehicle inspector application to be approved the applicant must:

- (1) be at least 18 years of age;
- (2) hold a valid driver license to operate a motor vehicle in Texas;
- (3) not be currently suspended or revoked in the Texas vehicle inspection program;
- (4) complete department provided training as outlined in this chapter;
- (5) pass with a grade of not less than 80, an examination on the Act, this chapter, and regulations of the department pertinent to the Texas vehicle inspection program;
- (6) successfully demonstrate ability to correctly operate the testing devices; and
- (7) meet all other eligibility criteria under the Act or this chapter.

§23.5. *Vehicle Inspection Station and Vehicle Inspector Disqualifying Criminal Offenses.*

(a) Vehicle inspection stations and vehicle inspectors are entrusted with ensuring the safety and fitness of vehicles traveling on the roads of Texas. Vehicle inspection stations and vehicle inspectors have constant access to and are responsible for the lawful disposition of government documents. For these reasons, the department has determined that the offenses contained within this section relate directly to the duties and responsibilities of vehicle inspection stations and vehicle inspectors certified under Texas Transportation Code, Chapter 548. The types of offenses listed in this section are general categories that include all specific offenses within the corresponding chapter of the Texas Penal Code and any such offenses regardless of the code in which they appear.

(b) The offenses listed in paragraphs (1) - (9) of this subsection are intended to provide guidance only, and are not exhaustive of either the types of offenses that may relate to vehicle inspections or the operation of a vehicle inspection station or those that are independently disqualifying under Texas Occupations Code, §53.021(a)(2) - (4). The disqualifying offenses also include those crimes under the laws of another state or the United States, if the offense contains elements that are substantially similar to the elements of a disqualifying offense un-

der the laws of this state. Such offenses also include the "aggravated" or otherwise heightened versions of the offenses listed in paragraphs (1) - (9) of this subsection. In addition, after due consideration of the circumstances of the criminal act and its relationship to the position of trust involved in vehicle inspections or the operation of a vehicle inspection station, the department may find that a conviction not described in this section also renders a person unfit to hold a certificate as a vehicle inspector or vehicle inspection station owner. In particular, an offense that is committed in one's capacity as a vehicle inspection station owner or vehicle inspector, or an offense that is facilitated by licensure as an owner or inspector, will be considered related to the occupation and will render the person unfit to hold the certification.

- (1) Arson, Criminal Mischief, and Other Property Damage or Destruction (Texas Penal Code, Chapter 28).
- (2) Robbery (Texas Penal Code, Chapter 29).
- (3) Burglary and Criminal Trespass (Texas Penal Code, Chapter 30).
- (4) Theft (Texas Penal Code, Chapter 31).
- (5) Fraud (Texas Penal Code, Chapter 32).
- (6) Bribery and Corrupt Influence (Texas Penal Code, Chapter 36).
- (7) Perjury and Other Falsification (Texas Penal Code, Chapter 37).
- (8) Criminal Homicide (Texas Penal Code, Chapter 19).
- (9) Driving Related Intoxication Offenses (Texas Penal Code, Chapter 49).

(c) A felony conviction for any such offense is disqualifying for ten years from the date of conviction, unless the offense was committed in one's capacity as a vehicle inspection station owner or vehicle inspector, or was facilitated by licensure as an owner or inspector, in which case it is permanently disqualifying. Conviction for a sexually violent offense as defined by Texas Code of Criminal Procedure, Article 62.001, or an offense listed in Texas Code of Criminal Procedure, Article 42.12 §3(g) or Article 42A.054, is permanently disqualifying.

(d) A felony conviction for an offense not listed or described in this section that does not relate to the occupation is disqualifying for five years from the date of conviction, pursuant to Texas Occupations Code, §53.021(a)(2).

(e) A Class A misdemeanor conviction for an offense listed in this section and any other offense determined by the department to directly relate to the duties and responsibilities of vehicle inspection stations or vehicle inspectors, including any unlisted offense committed in one's capacity as a vehicle inspection station owner or vehicle inspector or that was facilitated by licensure as an owner or inspector, is disqualifying for five years from the date of conviction.

(f) A Class B misdemeanor conviction for an offense listed in this section and any other offense determined by the department to directly relate to the duties and responsibilities of vehicle inspection stations or vehicle inspectors, including any unlisted offense committed in one's capacity as a vehicle inspection station owner or vehicle inspector or that was facilitated by licensure as an owner or inspector, is disqualifying for two years from the date of conviction.

(g) For purposes of this section, a person is convicted of an offense when an adjudication of guilt or an order of deferred adjudication for the offense is entered against the person by a court of competent jurisdiction.

(h) A person who is otherwise disqualified pursuant to the criteria in this section may submit documentation as detailed in paragraphs (1) - (8) of this subsection as evidence of his or her fitness to perform the duties and discharge the responsibilities of a vehicle inspection station certificate holder or vehicle inspector:

- (1) The extent and nature of the person's past criminal activity.
- (2) The age of the person when the crime was committed.
- (3) The amount of time that has elapsed since the person's last criminal activity.
- (4) The conduct and work activity of the person before and after the criminal activity.
- (5) Evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release.
- (6) Letters of recommendation from:
 - (A) prosecutors, law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
 - (B) the sheriff or chief of police in the community where the person resides; or
 - (C) any other person in contact with the convicted person.
- (7) Evidence the applicant has:
 - (A) maintained a record of steady employment;
 - (B) supported the applicant's dependents;
 - (C) maintained a record of good conduct; and
 - (D) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.
- (8) Any other evidence relevant to the person's fitness for the certification sought.
- (i) The failure to provide the required documentation in a timely manner may result in the proposed action being taken against the application or 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.

Filed with the Office of the Secretary of State on June 17, 2016.

TRD-201603069

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: July 31, 2016

For further information, please call: (512) 424-5848



SUBCHAPTER D. VEHICLE INSPECTION ITEMS, PROCEDURES, AND REQUIREMENTS

37 TAC §23.41, §23.42

(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 37 TAC

§23.41 and §23.42 is not included in the print version of the Texas Register. The figure is available in the on-line version of the July 1, 2016, issue of the Texas Register.)

The Texas Department of Public Safety (the department) proposes amendments to §23.41 and §23.42, concerning Vehicle Inspection Items, Procedures, and Requirements. The amendments reflect changes to the attached graphics, including the addition of the center mounted brake light as a required component of the vehicle inspection procedure for stop lamps, along with general updates relating to the vehicle inspection program required by Transportations Code, Chapter 548.

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

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be consistency with recent legislative changes and with federal regulations governing vehicle safety equipment.

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

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

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246 or by email at <https://www.txdps.state.tx.us/rsd/contact/default.aspx>. Select "Vehicle Inspection". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce Chapter 548.

Texas Government Code, §411.004(3), and Texas Transportation Code, §548.002 are affected by this proposal.

§23.41. Passenger (Non-Commercial) Vehicle Inspection Items.

(a) All items of inspection enumerated in this section shall be required to be inspected in accordance with the Texas Transportation

Code, Chapter 547, any other applicable state or federal law, and department or federal regulation as provided in the DPS Training and Operations Manual prior to the issuance of a vehicle inspection report.

(b) All items must be inspected in accordance with the attached inspection procedures. (The figure in this section reflects excerpts from the DPS Training and Operations Manual, Chapter 4.)

Figure: 37 TAC §23.41(b)

[Figure: 37 TAC §23.41(b)]

(c) A vehicle inspection report may not be issued for a vehicle equipped with a compressed natural gas (CNG) fuel system unless the vehicle inspector can confirm in a manner provided by subsection (d) of this section that:

(1) the CNG fuel container meets the requirements of Code of Federal Regulations, Title 49, §571.304; and

(2) the CNG fuel container has not exceeded the expiration date provided on the container's label.

(d) The requirements of subsection (c) may be confirmed by any appropriate combination of the items detailed in this subsection:

(1) Observation of Container Label. The vehicle inspector may confirm the requirement of (c)(2) of this section through direct observation of the expiration date on the container;

(2) Observation of Label at Fueling Connection Receptacle. The vehicle inspector may confirm through direct observation of a label affixed to the vehicle by the original equipment manufacturer or by a certified installer or inspector of CNG systems (as defined in subsection (g) of this section) reflecting that the requirements of subsection (c)(1) or (c)(2) are satisfied; or

(3) Documentation. The vehicle owner may furnish to the vehicle inspector documentation provided by the original vehicle equipment manufacturer or by a certified installer or inspector of CNG systems (as defined in subsection (g) of this section) reflecting that either or both requirements of subsection (c)(1) and (2) are satisfied.

(e) The owner or operator of a fleet vehicle may, as an alternative to the requirements of subsection (c) of this section, provide proof in the form of a written statement or report issued by the owner or operator that the vehicle is a fleet vehicle for which the fleet operator employs a certified installer or inspector of CNG systems (as defined in subsection (g) of this section).

(f) A copy of the written statement or report provided to the vehicle inspector under subsections (d)(3) or (e) of this section must be maintained in the vehicle inspection station's files for a period of one year from the date of the inspection and made available to the department on request.

(g) Certified installer or inspector of CNG systems: For purposes of this section, a certified installer or inspector of CNG systems is a person licensed by the Railroad Commission of Texas under 16 TAC §13.61.

§23.42. Commercial Vehicle Inspection Items.

(a) All items of inspection enumerated in this section must be inspected in accordance with the Federal Motor Carrier Safety Regulations, Texas Transportation Code, Chapter 547, and any other applicable state law and department regulation as provided in the DPS Training and Operations Manual prior to the issuance of a passing vehicle inspection report.

(b) All items must be inspected in accordance with the attached inspection procedures. The figure in this section reflects excerpts from the DPS Training and Operations Manual, Chapter 6.

Figure: 37 TAC §23.42(b)

[Figure: 37 TAC §23.42(b)]

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 17, 2016.

TRD-201603070

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: July 31, 2016

For further information, please call: (512) 424-5848



SUBCHAPTER F. VIOLATIONS AND ADMINISTRATIVE PENALTIES

37 TAC §23.62

The Texas Department of Public Safety (the department) proposes amendments to §23.62, concerning Violations and Penalty Schedule. These amendments reflect updates to language relating to Denial, Revocation, or Suspension of Certificate required by Transportation Code, §548.405.

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

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be consistency with recent legislative changes.

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

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

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246 or by email at <https://www.txdps.state.tx.us/rsd/contact/default.aspx>. Select "Vehicle Inspection". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce Chapter 548, and §548.405.

Texas Government Code, §411.004(3), and Texas Transportation Code, §548.002 and §548.405, are affected by this proposal.

§23.62. *Violations and Penalty Schedule.*

(a) As provided in Texas Transportation Code, §548.405, and in accordance with this section, the department may deny an application for a certificate, revoke or suspend the certificate of a person, vehicle inspection station, or inspector, place on probation, or reprimand a person who holds a certificate.

(b) Pursuant to Texas Transportation Code, §548.405(h) and (i), the department will administer penalties by the category of the violation. The violations listed in this section are not an exclusive list of violations. The department may assess penalties for any violations of Texas Transportation Code, Chapter 548 (the Act), or rules adopted by the department. The attached graphic summarizes the violation categories and illustrates the method by which penalties are enhanced for multiple violations.

Figure: 37 TAC §23.62(b) (No change.)

(c) Violation categories are as follows:

(1) Category A.

(A) Issuing a vehicle inspection report without inspecting one or more items of inspection.

(B) Issuing a vehicle inspection report without requiring the owner or operator to furnish proof of financial responsibility for the vehicle at the time of inspection.

(C) Issuing the wrong series or type of inspection report for the vehicle presented for inspection.

(D) Refusing to inspect a vehicle without an objective justifiable cause related to safety.

(E) Failure to properly safeguard inspection reports, department issued forms, the electronic station interface device, emissions analyzer access/identification card, and/or any personal identification number (PIN).

(F) Failure to maintain required records.

(G) Failure to have at least one certified inspector on duty during the posted hours of operations for the vehicle inspection station.

(H) Failure to display the official department issued vehicle inspection station sign, certificate of appointment, procedure chart and other notices in a manner prescribed by the department.

(I) Failure to post hours of operation.

(J) Failure to maintain the required facility standards.

(K) Issuing a vehicle inspection report to a vehicle with one failing item of inspection.

(L) Failing to enter information or entering incorrect vehicle information into the electronic station interface device or emissions analyzer resulting in the reporting of erroneous information concerning the vehicle.

(M) Failure to conduct an inspection within the inspection area approved by the department for each vehicle type.

(N) Failure of inspector of record to ensure complete and proper inspection.

(O) Failure to enter an inspection into the approved interface device at the time of the inspection.

(P) Conducting an inspection without the appropriate and operational testing equipment.

(Q) Failure to perform a complete inspection and/or issue a vehicle inspection report.

(R) Requiring repair or adjustment not required by the Act, this chapter, or department regulation.

(2) Category B.

(A) Issuing a passing vehicle inspection report without inspecting the vehicle.

(B) Issuing a passing vehicle inspection report to a vehicle with multiple failing items of inspection.

(C) Refusing to allow owner to have repairs or adjustments made at location of owner's choice.

(D) Allowing an uncertified person to perform, in whole or in part, the inspection or rejection of a required item during the inspection of a vehicle.

(E) Charging more than the statutory fee.

(F) Acting in a manner that could reasonably be expected to cause confusion or misunderstanding on the part of an owner or operator presenting a vehicle regarding the relationship between the statutorily mandated inspection fee and a fee for any other service or product offered by the vehicle inspection station.

(G) Failing to list and charge for any additional services separately from the statutorily mandated inspection fee.

(H) Charging a fee, convenience fee or service charge in affiliation or connection with the inspection, in a manner that is false, misleading, deceptive or unauthorized.

(I) Inspector performing inspection while under the influence of alcohol or drugs.

(J) Inspecting a vehicle at a location other than the department approved inspection area.

(K) Altering a previously issued inspection report.

(L) Issuing a vehicle inspection report, while employed as a fleet or government inspection station inspector, to an unauthorized vehicle. Unauthorized vehicles include those not owned, leased or under service contract to that entity, or personal vehicles of officers and employees of the fleet or government inspection station or the general public.

(M) Preparing or submitting to the department a false, incorrect, incomplete or misleading form or report, or failing to enter required data into the emissions testing analyzer or electronic station interface device and transmitting that data as required by the department.

(N) Issuing a passing vehicle inspection report without inspecting multiple inspection items on the vehicle.

(O) Issuing a passing vehicle inspection report by using the emissions analyzer access/identification card, the electronic station interface device unique identifier, or the associated PIN of another.

(P) Giving, sharing, lending or displaying an emissions analyzer access/identification card, the electronic station interface device unique identifier, or divulging the associated PIN to another.

(Q) Failure of inspector to enter all required data pertaining to the inspection, including, but not limited to data entry into the emissions testing analyzer, electronic station interface device, vehicle inspection report or any other department required form.

(R) Conducting multiple inspections outside the inspection area approved by the department for each vehicle type.

(S) Issuing a passing vehicle inspection report in violation of Texas Transportation Code, §548.104(d).

(T) Vehicle inspection station owner, operator or manager directing a state certified inspector under his employ or supervision to issue a vehicle inspection report when in violation of this chapter, department regulations, or the Act.

(U) Vehicle inspection station owner, operator, or manager having knowledge of a state certified inspector under the owner's employ or supervision issuing a passing vehicle inspection report in violation of this chapter, department regulations, or the Act.

(V) Issuing a safety only inspection report to a vehicle required to undergo a safety and emissions inspection without requiring a signed and legible affidavit, approved by the department, from the owner or operator of the vehicle, in a non emissions county.

(3) Category C.

(A) Issuing more than one vehicle inspection report without inspecting the vehicles.

(B) Issuing a passing vehicle inspection report to multiple vehicles with multiple failing items of inspection.

(C) Multiple instances of issuing a passing vehicle inspection report to vehicles with multiple defects.

(D) Emissions testing the exhaust or electronic connector of one vehicle for the purpose of enabling another vehicle to pass the emissions test (clean piping or clean scanning).

(E) Issuing a passing vehicle inspection report to a vehicle with multiple emissions related violations or violations on more than one vehicle.

(F) Allowing a person whose certificate has been suspended or revoked to participate in a vehicle inspection, issue a vehicle inspection report or participate in the regulated operations of the vehicle inspection station.

(G) Charging more than the statutory fee in addition to not inspecting the vehicle.

(H) Misrepresenting a material fact in any application to the department or any other information filed pursuant to the Act or this chapter.

(I) Conducting or participating in the inspection of a vehicle during a period of suspension, revocation, denial, after expiration of suspension but before reinstatement, or after expiration of inspector certification.

(J) Altering or damaging an item of inspection with the intent that the item fail the inspection.

(K) Multiple instances of preparing or submitting to the department false, incorrect, incomplete, or misleading forms or reports.

(L) Multiple instances of failing to enter complete and accurate data into the emissions testing analyzer or electronic station

interface device, or failing to transmit complete and accurate data in the manner required by the department.

(4) Category D. These violations are grounds for indefinite suspension based on the temporary failure to possess or maintain an item or condition necessary for certification. The suspension of inspection activities is lifted upon receipt by the department of proof the obstacle has been removed or remedied.

(A) Failing to possess a valid driver license.

(B) Failing to possess a required item of inspection equipment.

(5) Category E. These violations apply to inspectors and vehicle inspection stations in which emission testing is required.

(A) Failing to perform applicable emissions test as required.

(B) Issuing a passing emissions inspection report without performing the emissions test on the vehicle as required.

(C) Failing to perform the gas cap test, or the use of unauthorized bypass for gas cap test.

(D) Issuing a passing emissions inspection report when the required emissions adjustments, corrections or repairs have not been made after an inspection disclosed the necessity for such adjustments, corrections or repairs.

(E) Falsely representing to an owner or operator of a vehicle that an emissions related component must be repaired, adjusted or replaced in order to pass emissions inspection.

(F) Requiring an emissions repair or adjustment not required by this chapter, department regulation, or the Act.

(G) Tampering with the emissions system or an emission related component in order to cause vehicle to fail emissions test.

(H) Refusing to allow the owner to have emissions repairs or adjustments made at a location of the owner's choice.

(I) Allowing an uncertified person to conduct an emissions inspection.

(J) Charging more than the authorized emissions inspection fee.

(K) Entering false information into an emission analyzer in order to issue an inspection report [~~certificate~~].

(L) Violating a prohibition described in §23.57 [~~§28.57~~] of the title (relating to Prohibitions).

(d) When assessing administrative penalties, the procedures detailed in this subsection will be observed:

(1) Multiple vehicle inspection station violations may result in action being taken against all station licenses held by the owner.

(2) The department may require multiple suspension periods be served consecutively.

(3) Enhanced penalties assessed will be based on previously adjudicated violations in the same category. Any violation of the same category committed after final adjudication of the prior violation will be treated as a subsequent violation for purposes of penalty enhancement.

(A) Category A violations are subject to a two year period of limitations preceding the date of the current violation.

(B) Under Category B, C, and E, subsequent violations are based on the number of previously adjudicated or otherwise finalized violations in the same category within the five year period preceding the date of the current violation.

(e) Certification for a vehicle inspection station may not be issued if the person's immediate family member's certification as a vehicle inspection station owner at that same location is currently suspended or revoked, or is subject to a pending administrative adverse action, unless the person submits an affidavit stating the certificate holder who is the subject of the suspension, revocation or pending action, has no, nor will have any, further involvement in the business of state inspections.

(f) A new certification for a vehicle inspection station may be issued at the same location where the previous certificate holder as an owner or operator is pending or currently serving a suspension or revocation, if the person submits an affidavit stating the certificate holder who is the subject of the suspension or revocation, has no, nor will have any, further involvement in the business of state inspections. The affidavit must contain the statement that the affiant understands and agrees that in the event the department discovers the previous certificate holder is involved in the inspection business at that location, the certificate will be revoked under Texas Transportation Code, §548.405. In addition to the affidavit, when the change of ownership of the vehicle inspection station is by lease of the building or the inspection area, the person seeking certification must provide a copy of the lease agreement included with the application for certification as an official vehicle inspection station.

(g) Reinstatement. Expiration of the suspension period does not result in automatic reinstatement of the certificate. Reinstatement must be requested by contacting the department, and this may be initiated prior to expiration of the suspension. [After expiration of a period of suspension, reinstatement must be requested by submitting a written application to the department.] In addition, to meet all qualifications for the certificate, the certificate holder must [the conditions detailed in paragraphs (1) - (4) of this subsection must be met]:

~~[(1) all qualifications for appointment;]~~

~~(1) [(2)] pass [passing] the complete written and demonstration test when required;~~

~~(2) [(3)] submit [submitting] the certification fee if certification has expired during suspension; and~~

~~(3) [(4)] pay [paying] all charges assessed related to the administrative hearing process, if applicable.~~

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 17, 2016.

TRD-201603071

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: July 31, 2016

For further information, please call: (512) 424-5848



SUBCHAPTER H. MISCELLANEOUS VEHICLE INSPECTION PROVISIONS

37 TAC §23.82

The Texas Department of Public Safety (the department) proposes the repeal of §23.82, concerning Acceptance of Out-of-State Vehicle Inspection Certificates. This provision was rendered unnecessary by Transportation Code, §548.256 as amended by House Bill 1888, 84th Legislative Session.

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

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be consistency with recent legislative changes.

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

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

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246 or by email at <https://www.txdps.state.tx.us/rsd/contact/default.aspx>. Select "Vehicle Inspection". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce Chapter 548 and §548.256.

Texas Government Code, §411.004(3), and Texas Transportation Code, §548.002 and §548.256, are affected by this proposal.

§23.82. *Acceptance of Out-of-State Vehicle Inspection Certificates.*

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 17, 2016.

TRD-201603072

D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: July 31, 2016
For further information, please call: (512) 424-5848

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SUBCHAPTER I. MILITARY SERVICE MEMBERS, VETERANS, AND SPOUSES-- SPECIAL CONDITIONS

37 TAC §§23.91 - 23.94

The Texas Department of Public Safety (the department) proposes new §§23.91 - 23.94, concerning Military Service Members, Veterans, and Spouses--Special Conditions. This proposal implements the requirements of Occupations Code, Chapter 55, as amended by Senate Bill 1307, 84th Legislative Session, requiring the creation of exemptions and extensions for occupational license applications and renewals for military service members, military veterans, and military spouses.

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

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be consistency with legislative requirements and potentially greater occupational opportunities military service members, military veterans, and military spouses.

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

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

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246 or by email at <https://www.txdps.state.tx.us/rsd/contact/default.aspx>. Select "Vehicle Inspection". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

The new rules are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Occupations Code, §55.02 which authorizes a state agency that issues a license to adopt rules to exempt an individual who holds a license issued by the agency from an increased fee or other penalty imposed by the agency for failing to renew the license in a timely manner if the individual establishes to the satisfaction of the agency that the individual failed to renew the license in a timely manner because the individual was serving as a military service member.

Texas Government Code, §411.004(3), and Occupations Code, §55.02, are affected by this proposal.

§23.91. Exemption from Penalty for Failure to Renew in Timely Manner.

An individual who holds a certificate issued under the Act is exempt from any increased fee or other penalty for failing to renew the certificate in a timely manner if the individual establishes to the satisfaction of the department the individual failed to renew the certificate in a timely manner because the individual was serving as a military service member.

§23.92. Extension of Certificate Renewal Deadlines for Military Members.

A military service member who holds a certificate issued under the Act, is entitled to two (2) additional years to complete:

(1) Any continuing education requirements; and

(2) Any other requirement related to the renewal of the person's certificate.

§23.93. Alternative Licensing for Military Service Members, Military Veterans, and Military Spouses.

(a) An individual who is a military service member, military veteran, or military spouse may apply for a certificate under this section if the individual:

(1) Holds a current certificate issued by another jurisdiction with licensing requirements substantially equivalent to the Act's requirements for the certificate; or

(2) Within the five (5) years preceding the application date held a certificate in this state.

(b) The department may accept alternative demonstrations of professional competence in lieu of existing experience, training, or educational requirements.

§23.94. Definitions.

For purposes of this subchapter, the terms 'military service member', 'military veteran', and 'military spouse' have the meanings provided in Texas Occupations Code, §55.001.

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 17, 2016.

TRD-201603073

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: July 31, 2016

For further information, please call: (512) 424-5848

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CHAPTER 27. CRIME RECORDS
SUBCHAPTER A. REVIEW OF PERSONAL
CRIMINAL HISTORY RECORD

37 TAC §27.1

The Texas Department of Public Safety (the department) proposes amendments to §27.1, concerning Right of Review. These amendments are necessary to reflect current procedures for the personal review of criminal history record information.

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

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rules will be publication of the current procedures for the personal review of criminal history record information.

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

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

Comments on this proposal may be submitted to Angie Kendall, Texas Department of Public Safety, Law Enforcement Support, 5805 N. Lamar Blvd., Austin, Texas 78773. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §411.083(b)(3), which requires the department to grant access to criminal history record information to the person who is the subject of the information; and §411.086, which requires the department to adopt rules that provide for a uniform method of requesting criminal history record information from the department.

Texas Government Code, §§411.004(3), 411.083(b)(3), and 411.086 are affected by this proposal.

§27.1. Right of Review.

(a) It is the policy of the Texas Department of Public Safety (the department) that a person may access and receive a copy of criminal history record information maintained by the department that relates to the person upon payment of a fee as authorized by Texas Government Code, §411.088. [A person with criminal history record information on file with the Federal Bureau of Investigation (FBI) must contact the Special Correspondence Bureau of the FBI at (304) 625-3878 to review or correct those records.] In this section, "criminal history record information" means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations and other formal criminal charges and their dispositions. This term does not include identification information, including fingerprint records, to the extent that the identification information does not indicate involvement of the person in the criminal justice system or driving record information maintained by the department under Texas Transportation Code, Chapter 521, Subchapter C. A person with criminal history record information on file with the Federal Bureau of Investigation (FBI) must contact the FBI's Special Correspondence Bureau at (304) 625-3878 to request a copy of their national criminal history record information to review.

(b) A person may schedule a fingerprinting appointment by visiting www.dps.texas.gov/administration/crime_records/pages/applicantfingerprintservices.htm [A person may personally appear at 108 Denson Drive, Austin, Texas 78752 during normal business hours and request their criminal history record information as detailed in this subsection.]

(1) Biographical Data. Biographical data to further help in the positive identification of the subject being fingerprinted must be provided. This data is confidential and may not be released by the department unless authorized. [The person must present a government issued photo identification document, be fingerprinted by a designee of the department to establish identification and provide the items detailed in this paragraph:]

[(A) the person's complete name (Last, First, Middle), including any other names used by the person; and]

[(B) the person's sex, race and date of birth (Month, Day, Year).]

(2) Fee. The person must pay the \$25 fee via credit card, business check or money order at the time services are rendered. Personal checks and cash are not accepted. [The person must remit a personal check, money order, or cash in the amount of \$24.95 (\$9.95 fingerprint acquisition fee and \$15 Texas Record Check Fee per fingerprint submission).]

(3) Identification. A person must present an approved government issued photo identification document and be fingerprinted by the department's designee. For a list of approved identification documents please visit http://www.txdps.state.tx.us/administration/crime_records/docs/ProveldForFingerprinting.pdf [Results will be available for pick up within two business days at 108 Denson Drive, Austin, Texas 78752.]

(4) Results. Criminal history results will be delivered to the designated address within 7 to 10 business days. [If a person needs a certified letter to accompany the criminal history response it will be provided upon request.]

(c) A person may appear at 108 Denson Drive, Austin, Texas 78752 during department business hours and request to be fingerprinted to obtain their criminal history record information. [A person may find appointment and DPS fingerprinting locations; by visiting

www.dps.texas.gov/administration/crime_records/pages/applicantfingerprintservices.htm and provide the items detailed in this subsection:]

(1) Biographical Data. Biographical data to further help in the positive identification of the subject being fingerprinted must be provided. This data is confidential and may not be released by the department unless authorized.

[(A) the person's complete name (Last, First, Middle), including any other names used by the person; and]

[(B) the person's sex, race and date of birth (Month, Day, Year).]

(2) Fee. The person must pay the \$25 fee via credit card, business check or money order at the time services are rendered. Personal Checks and cash are not accepted. [The person may pay the \$24.95 online or over the phone via credit card. In addition, the person may wait to submit payment until the time of fingerprinting via personal check or money order. Cash and credit cards are not accepted at field locations.]

(3) Identification. A person must present an approved government issued photo identification document and be fingerprinted by the department's designee. For a list of approved identification documents please visit http://www.txdps.state.tx.us/administration/crime_records/docs/ProveldForFingerprinting.pdf [At the field location, the person must present a government issued photo identification document and be fingerprinted by a designee of the department to establish identification.]

(4) Results. Criminal history results will be delivered to the designated address within 7 to 10 business days. [The criminal history results and a certified letter will be delivered to the address designated during scheduling within 7 to 10 business days.]

(d) A person residing out of state can submit their fingerprints by completing the forms and following the instructions for "Fingerprints Submitted By Mail" at www.dps.texas.gov/internet-forms/Forms/CR-63.pdf. [:]

(1) Biographical Data. Biographical data to further help in the positive identification of the subject being fingerprinted must be provided. This data is confidential and may not be released by the department unless authorized. [Identification: When attending a law enforcement agency or FAST Provider near you, the person must present a government issued photo identification document and be fingerprinted by a designee of the department to establish identification.]

(2) Fee. The person must pay the \$25 fee via credit card, business check or money order at the time services are rendered. Personal Checks and cash are not accepted. [Results: The criminal history results and a certified letter will be delivered to the address designated during scheduling within 10 to 14 business days.]

(3) Identification. A person must present an approved government issued photo identification document and be fingerprinted by the department's designee. For a list of approved identification documents please visit http://www.txdps.state.tx.us/administration/crime_records/docs/ProveldForFingerprinting.pdf [Illegible prints or incomplete information: Fingerprint cards with illegible prints or incomplete information will be returned to the address provided.]

(4) Results. Criminal history results will be delivered to the designated address within 10 to 14 business days.

(e) If a person believes criminal history record information maintained by the department [relating to the person] is incorrect or incomplete, the person may visit: [41 TexReg 4792 July 1, 2016 Texas Register](http://www.dps.texas.gov/admin-</p></div><div data-bbox=)

istration/crime_records/pages/errorresolution.htm and complete the required forms.

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 17, 2016.

TRD-201603074

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: July 31, 2016

For further information, please call: (512) 424-5848



CHAPTER 28. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

SUBCHAPTER B. CODIS RESPONSIBILITIES OF THE DIRECTOR

37 TAC §28.24, §28.31

The Texas Department of Public Safety (the department) proposes amendments to §28.24 and §28.31, concerning CODIS Responsibilities of the Director. Amendments to §28.24 are necessary to ensure compliance with Texas Government Code, §411.147. The amendment to §28.31 is necessary to correct an incorrect reference to statute.

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

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with these rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be an increase in public safety by assisting the criminal justice and law enforcement communities in the investigation or prosecution of offenses in which biological evidence is recovered.

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

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

Comments on this proposal may be submitted to Jennifer Howard, Texas Department of Public Safety, 5800 Guadalupe Street, Austin, Texas 78752 or jennifer.howard@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Government Code, §411.144(a), which authorizes the director by rule to establish procedures for a DNA laboratory or criminal justice agency in the collection, preservation, shipment, analysis, and use of DNA sample for forensic DNA analysis in a manner that permits the exchange of DNA evidence between DNA laboratories and the use of the evidence in a criminal case and §§411.144(e), 411.147(a), and 411.152(a).

Texas Government Code, §§411.004(3), 411.144(a) and (e), 411.147(a), and 411.152(a) are affected by this proposal.

§28.24. DNA Records Access.

(a) The director may release a DNA sample, analysis, profile, or record, only:

- (1) to a criminal justice agency for criminal justice or law enforcement identification purposes;
- (2) to a court for a judicial proceeding, if otherwise admissible under law;
- (3) to a criminal defendant for defense purposes, if related to the case in which the defendant is charged; or
- (4) if personally identifiable information is removed, for:
 - (A) a population statistics database;
 - (B) forensic identification research and forensic protocol development; or
 - (C) quality control.

(b) The director may only release a DNA sample[, analysis or record] to a criminal justice or law enforcement agency [laboratory] for criminal justice or law enforcement purposes through: [-]

- (1) the agency's laboratory;
- (2) a laboratory used by the agency; or
- (3) a laboratory directed by a valid court order.

(c) The director shall maintain a record of requests made under this section. The director may release a record of the number of requests made for a defendant's DNA record and the name of the requesting person.

(d) A file, fingerprint, or other identifying record submitted to the director by Texas Juvenile Justice Department [TJJD] or a local juvenile probation department under this chapter and relating to or identifying a juvenile shall be maintained separately from adult records. This subsection does not apply to storage or use of a DNA record in the DNA database.

§28.31. Court Order.

If any person subject to this chapter fails or refuses to comply with this chapter or with Government Code, Chapter 411, Subchapter G [H], the director may request a district or county attorney or the attorney general to seek compliance with the act through a court order.

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 15, 2016.

TRD-201603042

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: July 31, 2016

For further information, please call: (512) 424-5848

