

# ADOPTED RULES

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

## TITLE 4. AGRICULTURE

### PART 2. TEXAS ANIMAL HEALTH COMMISSION

#### CHAPTER 38. TRICHOMONIASIS

##### 4 TAC §38.6

The Texas Animal Health Commission (commission) adopts amendments to §38.6, concerning Official Trichomoniasis Tests, without changes to the proposed text as published in the May 26, 2017, issue of the *Texas Register* (42 TexReg 2789).

The purpose of the amendments is to approve a new official Trichomoniasis test.

The Bovine Trich Working Group (TWG) met on April 11, 2017, to evaluate the effectiveness of current rules. The TWG discussed the program overview to date, the management of infected herds, entry requirements, and the need for possible revisions to the program.

The TWG recommended that the commission propose rules to authorize an additional official test. Texas A&M Veterinary Medical Diagnostic Laboratory (TVMDL) is in the process of implementing an enhanced Trichomoniasis testing technology for the Polymerase Chain Reaction (PCR) test. PCR is currently accepted as an official test or an official confirmatory test for Trichomoniasis. TVMDL's Direct Sample qPCR is an enhanced testing technology using PCR. Unlike the current PCR, the qPCR test does not require the sample to be incubated or placed in an InPouch. The TWG also recommended that the deadline for submitting samples to an approved laboratory remain at 96 hours, but encouraged submission of samples to be accomplished within 48 hours.

Further, the amendment adds the term InPouch to the culture testing requirement. This addition will ensure the sample is properly collected and submitted for testing.

The commission received two comments regarding the proposal, but no changes were made in response to the comments. One commenter made a comment regarding the difficulty of meeting the 96-hour submission timeframe instead of the 120-hour previously in the rule. Unfortunately, that was done through a previous rule amendment process and was not open for comments in this rule amendment. The other comment was supportive of the proposed testing using qPCR.

##### STATUTORY AUTHORITY

The amendments are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domes-

tic fowl from disease. The commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.005, entitled "Commission Written Instruments", the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire commission.

Pursuant to §161.006, entitled "Documents to Accompany Shipment", if required that a certificate or permit accompany animals or commodities moved in this state, the document must be in the possession of the person in charge of the animals or commodities, if the movement is made by any other means.

Pursuant to §161.0417, entitled "Authorized Personnel for Disease Control", a person, including a veterinarian, must be authorized by the commission in order to engage in an activity that is part of a state or federal disease control or eradication program for animals. Section 161.0417 requires the commission to adopt necessary rules for the authorization of such persons and, after reasonable notice, to suspend or revoke a person's authorization if the commission determines that the person has substantially failed to comply with Chapter 161 or rules adopted under that chapter. Section 161.0417 does not affect the requirement for a license or an exemption under Chapter 801, Occupations Code, to practice veterinary medicine.

Pursuant to §161.046, entitled "Rules", the commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.048, entitled "Inspection of Shipment of Animals or Animal Products", the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease.

Pursuant to §161.061, entitled "Establishment", if the commission determines that a disease listed in §161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place.

Pursuant to §161.101, entitled "Duty to Report", a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the diseases, if required by the commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis of the disease.

Pursuant to §161.113, entitled "Testing or Treatment of Livestock", if the commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission. The state may not be required to pay the cost of fees charged for the testing or vaccination. And if the commission requires the dipping of livestock under this subchapter, the livestock shall be submerged in a vat, sprayed, or treated in another sanitary manner prescribed by rule of the commission.

Pursuant to §161.114, entitled "Inspection of Livestock", an authorized inspector may examine livestock consigned to and delivered on the premises of a livestock market before the livestock are offered for sale. If the inspector considers it necessary, the inspector may have an animal tested or vaccinated. Any testing or vaccination must occur before the animal is removed from the livestock market.

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

Filed with the Office of the Secretary of State on August 23, 2017.

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Gene Snelson

General Counsel

Texas Animal Health Commission

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For further information, please call: (512) 719-0722



## CHAPTER 51. ENTRY REQUIREMENTS

### 4 TAC §51.1, §51.8

The Texas Animal Health Commission (commission) adopts amendments to §51.1, concerning Definitions, and §51.8, concerning Cattle, without changes to the proposed text as published in the May 26, 2017, issue of the *Texas Register* (42 TexReg 2790).

The purpose of the amendments is to address Bovine Trichomoniasis requirements to enter the state.

Bovine Trichomoniasis (Trich) is a venereal disease of cattle. The Trich organism causes abortion and extended calving seasons. Bulls will remain persistently infected and spread infection from cow to cow.

The Bovine Trich Working Group (TWG) met on April 11, 2017, to evaluate the effectiveness of current Trichomoniasis rules. The TWG discussed the program overview to date, the management of infected herds, entry requirements, and the need for possible revisions to the program.

The TWG recommended a revision to the commission's current entry requirement regarding the use of a virgin certificate for breeding bulls between 12 months and 18 months of age. Commission rules generally require that bulls 12 months of age or

older have a negative Trich test within 60 days prior to entering Texas. However, bulls that are 18 months of age or younger and receive a virgin status certificate are exempt from this testing requirement. The TWG is concerned that this exemption provides an opportunity for unknown status bulls that are infected with Trich to enter the state. As such, the TWG recommended that the virgin status certification exemption be removed from the commission's rule.

The TWG recommended adding a testing requirement exemption for bulls that are 12 months of age or older, receive a permit from the commission prior to entry, and are moved directly to a federally approved livestock market. The certificate of veterinary inspection for the bull must include the entry permit number and a statement that the bull must be Trich tested or sold for slaughter. This recommendation is consistent with intrastate requirements for bulls being sold at markets. As such, the bulls entering under this exemption would be tracked using the existing infrastructure, which minimizes the risk of Trichomoniasis being spread by these bulls. For clarity, the commission is defining "directly", "federally approved market" and "Trichomoniasis" in the proposed rule.

The TWG also recommended the commission prohibit the entry of female cattle that originated from a known Trichomoniasis positive herd, or were exposed to known Trichomoniasis positive bull unless the animal is officially identified, obtains a commission issued permit and is moved directly to an approved slaughtering establishment, and accompanied by a certificate of veterinary inspection stating the animal is Trichomoniasis exposed.

The commission received four comments regarding the proposal, but no changes were made in response to the comments. One commenter was supportive of the proposed entry requirements. Another commenter indicated they had bought a breeding bull from a reputable breeder, but was later found to be infected. The commenter indicated it was probably because of infected cattle, which indicated to the commenter there was a need for regulations on cattle. The third commenter indicated that while desirable to contain Trich, the cost of a Trich test (\$200), with a turnaround time (5 days) makes an inhospitable environment to control. It then becomes an encumbrance to interstate bull sales making the commenter believe that the proposed regulation needs to be tabled until database, commence, genetic, and accuracy concerns can be resolved. Another comment focused on the fact that the restrictions based on female cattle in the proposal should also be done within the State of Texas. The commenter went on to provide the commission specific feedback and guidance on an instate Trich program to address the problem with female cattle. The commission appreciates the comment and will evaluate it for future consideration in the appropriate chapter.

#### STATUTORY AUTHORITY

The amendments are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.054, entitled "Regulation of Movement of Animals", the commission, by rule, may regulate the movement of animals. The commission may restrict the intrastate movement

of animals even though the movement of the animals is unrestricted in interstate or international commerce.

Pursuant to §161.048, entitled "Inspection of Shipment of Animals or Animal Products", the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease.

Pursuant to §161.005, entitled "Commission Written Instruments", the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire commission.

Pursuant to §161.044, entitled "Regulation of Livestock Movement from Stockyards or Railway Shipping Pens", the commission may regulate the movement of livestock out of stockyards or railway shipping pens and require treatment or certification of those animals as reasonably necessary to protect against communicable diseases.

Pursuant to §161.046, entitled "Rules", the commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.049, entitled "Dealer Records", the commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer.

Pursuant to §161.061, entitled "Establishment", if the commission determines that a disease listed in §161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place.

Pursuant to §161.081, entitled "Importation of Animals", the commission by rule may regulate the movement, including movement by a railroad company or other common carrier, of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country.

Pursuant to §161.112, entitled "Rules", the commission shall adopt rules relating to the movement of livestock, exotic livestock, and exotic fowl from livestock markets and shall require tests, immunization, and dipping of those livestock as necessary to protect against the spread of communicable diseases.

Pursuant to §161.113, entitled "Testing or Treatment of Livestock", if the commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission. The state may not be required to pay the cost of fees charged for the testing or vaccination. And if the commission requires the dipping of livestock under this subchapter, the

livestock shall be submerged in a vat, sprayed, or treated in another sanitary manner prescribed by rule of the commission.

Pursuant to §161.114, entitled "Inspection of Livestock", an authorized inspector may examine livestock consigned to and delivered on the premises of a livestock market before the livestock are offered for sale. If the inspector considers it necessary, the inspector may have an animal tested or vaccinated. Any testing or vaccination must occur before the animal is removed from the livestock market.

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

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## **TITLE 16. ECONOMIC REGULATION**

### **PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION**

#### **CHAPTER 62. CODE ENFORCEMENT OFFICERS**

The Texas Commission of Licensing and Regulation (Commission) adopts new rules at 16 Texas Administrative Code (TAC), Chapter 62, §§62.1, 62.20 - 62.25, 62.30, 62.65, 62.70 - 62.72, 62.90 and 62.91, regarding the Code Enforcement Officers program, without changes to the proposed text as published in the April 21, 2017, issue of the *Texas Register* (42 TexReg 2051). The rules will not be republished.

The Commission also adopts new rules at 16 TAC, Chapter 62, §62.10 and §62.80, regarding the Code Enforcement Officers program, with changes to the proposed text as published in the April 21, 2017, issue of the *Texas Register* (42 TexReg 2051). The rules will be republished.

The Texas Legislature enacted Senate Bill 202 (SB 202), 84th Legislature, Regular Session (2015), which, in part, transferred 13 occupational licensing programs in two phases from the Department of State Health Services (DSHS) to the Commission and the Texas Department of Licensing and Regulation (Department). The Commission and Department completed the Phase 1 transition of seven programs on October 3, 2016.

Under Phase 2, the following six programs are being transferred from DSHS to the Commission and the Department: (1) Laser Hair Removal, Texas Health and Safety Code, Chapter 401, §§401.501 - 401.522; (2) Massage Therapy, Texas Occupations Code, Chapter 455; (3) Code Enforcement Officers, Texas Occupations Code, Chapter 1952; (4) Sanitarians, Texas Occupations Code, Chapter 1953; (5) Mold Assessors and Remediators, Texas Occupations Code, Chapter 1958; and (6) Offender Education Programs, Alcoholic Beverage Code, Chapter 106, §106.115 (Alcohol Education Program for Minors); Transporta-

tion Code, Chapter 521, §§521.374 - 521.376 (Drug Offender Education Program); Code of Criminal Procedure, Chapter 42A, Articles 42A.403, 42A.405 and 42A.406 (formerly Chapter 42, Article 42.12, §13(h)) (DWI Education Program); and Code of Criminal Procedure, Chapter 42A, Articles 42A.404, 42A.405, and 42A.406 (formerly Chapter 42, Article 42.12, §13(j)) (DWI Intervention Program). The statutory amendments transferring regulation of these six Phase 2 programs from DSHS to the Commission and the Department will take effect on September 1, 2017.

The new rules were adopted to enable the Commission and the Department to regulate the six Phase 2 programs listed above. The adopted new rules provide for the Department to perform the various functions, including licensing, compliance, and enforcement, necessary to regulate these transferred programs. The effective date of adopted §§62.1, 62.10 and 62.65 is September 15, 2017, to allow the Department to establish an advisory committee. The effective date of the remaining adopted rule sections is November 1, 2017. The effective date will coincide with the completion of the transfer of the programs to the Commission and the Department.

The adopted new §62.1 provides the statutory authority for the Commission and the Department to regulate code enforcement officers.

The adopted new §62.10 creates the definitions to be used in the code enforcement officers program.

The adopted new §62.20 states the criteria for registration as a code enforcement officer or code enforcement officer in training; creates a process allowing a code enforcement officer in training to upgrade a registration to that of code enforcement officer; and requires the Department to grant a certificate of registration to a licensee or registrant of another state that has requirements for the licensing or registration of a code enforcement officer that are at least equivalent to those of this state.

The adopted new §62.21 states the criteria for taking a Department examination; requires compliance with the Department's examination requirements; and states that cheating on a Department examination is grounds for denial, suspension, or revocation of a registration and/or assessment of an administrative penalty.

The adopted new §62.22 states that a code enforcement officer registration expires two years from the date of issuance, and may be renewed biennially; a code enforcement officer in training registration expires one year from the date of issuance, and may be renewed annually; and that a registration is not transferable.

The adopted new §62.23 requires an applicant for a code enforcement officer or code enforcement officer in training registration to complete a 36-hour training program in code enforcement from an educational institution accredited or licensed by the Texas Education Agency or Texas Higher Education Coordinating Board. The adopted rule also defines a number of topics that must be covered in the training program.

The adopted new §62.24 sets out the continuing education requirements that must be met by a code enforcement officer or code enforcement officer in training in order to renew a registration.

The adopted new §62.25 states the requirements for renewal of a code enforcement officer or code enforcement officer in training registration.

The adopted new §62.30 restates the statutory exemptions from registration.

The adopted new §62.65 establishes the Code Enforcement Officers Advisory Committee to provide advice and recommendations to the Department on technical matters relevant to the administration of the code enforcement officers program. The adopted rule also states the structure of the board and sets out requirements for members' terms, appointment of a presiding officer, quorum, and removal of members.

The adopted new §62.70 states the general standards of conduct for engaging in code enforcement activities. The adopted rule states a number of requirements and prohibited acts for persons engaged in code enforcement.

The adopted new §62.71 sets out the responsibilities of persons who supervise code enforcement officers in training. The adopted rule states the qualifications of a supervisor, establishes prohibited conduct, and requires supervisors to notify the Department when supervision of a code enforcement officer in training ceases.

The adopted new §62.72 lists the responsibilities of code enforcement officers in training (supervisees) under the supervision of a registered code enforcement officer. The adopted rule requires a supervisee to maintain current information with the Department regarding the details of the supervisee's work and supervision. The adopted rule also defines prohibited conduct.

The adopted new §62.80 states the fees to be charged by the Department for registration, renewal, upgrades, duplicate registrations, dishonored payment devices, and criminal history evaluation letters.

The adopted new §62.90 authorizes the imposition of administrative penalties or other sanctions against persons who violate program rules, Chapters 51 or 1952 of the Texas Occupations Code, or any rule or order of the commission or executive director.

The adopted new §62.91 states that the enforcement authority granted under Texas Occupations Code Chapters 51 and 1952 and any associated rules may be used to enforce those chapters and these rules.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the April 21, 2017, issue of the Texas Register (42 TexReg 2051). The deadline for public comments was May 22, 2017. The Department held a public hearing during the public comment period on May 11, 2017. During the 30-day public comment period the Department received comments from three interested parties. The public comments received are summarized below.

Comment--One commenter suggested adding training in communication, customer service delivery, and safety to the education and continuing education requirements. The commenter also suggested increasing the number of supervisees that may be supervised by a registered code enforcement officer.

Department Response--Adding the suggested categories to the program's educational requirements would be a substantive change that would require republication. At this time, the Department did not increase the number of supervisees that may be supervised by a registered code enforcement officer. The Department believes the current standard is adequate to ensure

quality control and training. This issue may be considered at a later date.

Comment--One commenter suggested adding language to §62.10 in order to differentiate between code enforcement officers and code enforcement officers in training. The commenter also suggested adding language to the proposed rules to make it clear that payments and applications may be completed online. The commenter recommended that computer-based training be allowed as a department-approved form of continuing education delivery, and that promotion of health and safety should be added to the program's continuing education requirements. Lastly, the commenter also stated concern that the proposed rules regarding cessation of supervision would be difficult to comply with.

Department Response--The Department made changes to §62.10(6) to make clearer the distinction between code enforcement officers and code enforcement officers in training. In addition, the Department changed the definition in §62.10(4) to correspond with how it is defined in Texas Occupations Code, Chapter 1952. Changes to the continuing education requirements were not made, as those recommendations require substantive changes necessitating republication. The Department's existing rules allow for payments and applications to be submitted online.

Comment--The last commenter asked a question regarding §62.30 and the application of the exemption from registration.

Department Response--Each application and exemption is processed based on licensing requirements established by rule and statute. The Department did not make any changes to the proposed rules based on this comment.

During the rulemaking process the Department conducted a fee analysis for the Code Enforcement Officers program. Section 51.202 of the Texas Occupations Code, requires the Commission to set fees in amounts reasonable and necessary to cover the costs of administering the programs under the Department's jurisdiction. Additionally, Article VIII, Section 2 of the General Appropriations Act requires the Department's revenue cover the cost of the Department's appropriations and other direct and indirect costs. The Department found that the fees in the proposed rules were above the amounts that will be required for the Department to cover its costs. Therefore, the Department has reduced the fee for the code enforcement officer renewal from \$100 to \$75. The decrease in this fee will not adversely affect the administration and enforcement of the program. The reduction in the renewal fee will result in approximately \$22,250 of lost revenue to the state each year.

At its meeting on August 18, 2017, the Commission adopted the proposed rules with changes as recommended by the Department.

### **16 TAC §§62.1, 62.10, 62.65**

The new rules are adopted under Texas Occupations Code, Chapters 51 and 1952, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted are those set forth in Texas Occupations Code, Chapters 51 and 1952. No other statutes, articles, or codes are affected by the adoption.

§62.10. *Definitions.*

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

(1) Act--Occupations Code, Chapter 1952, concerning the registration of code enforcement officers.

(2) Advisory Committee--The Code Enforcement Officers Advisory Committee.

(3) Applicant--A person who applies for registration under the Act.

(4) Code enforcement--The inspection of public or private premises for the purpose of:

(A) identifying environmental hazards, including:

(i) fire or health hazards;

(ii) nuisance violations;

(iii) unsafe building conditions; and

(iv) violations of any fire, health, or building regulation, statute, or ordinance; and

(B) improving and rehabilitating those premises with regard to those hazards.

(5) Code enforcement officer--An agent of this state or a political subdivision of this state who engages in code enforcement. This term does not include an agent of an agency of the federal government.

(6) Code enforcement officer in training (also referred to as Supervisee)--An agent of this state or a political subdivision of this state who possesses less than one year of full-time experience in the field of code enforcement and engages in code enforcement under the supervision of a code enforcement officer. This term does not include an agent of an agency of the federal government.

(7) Commission--The Texas Commission of Licensing and Regulation.

(8) Department--The Texas Department of Licensing and Regulation.

(9) Executive Director--The executive director of the Texas Department of Licensing and Regulation.

(10) Full-time experience--Employment, self-employment, or independent contracting in the field of code enforcement where the regularly assigned duties include code enforcement for a minimum of 32 hours per week.

(11) Registrant--A person registered under the Act.

(12) Supervisor--A code enforcement officer who supervises one or more code enforcement officers in training.

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

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Brian E. Francis

Executive Director

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-8179

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**16 TAC §§62.20 - 62.25, 62.30, 62.70 - 62.72, 62.80, 62.90, 62.91**

The new rules are adopted under Texas Occupations Code, Chapters 51 and 1952, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted are those set forth in Texas Occupations Code, Chapters 51 and 1952. No other statutes, articles, or codes are affected by the adoption.

*§62.80. Fees.*

- (a) Fees paid to the department are non-refundable.
- (b) Registration fees:
  - (1) Code enforcement officer, two-year term--\$100
  - (2) Code enforcement officer in training, one-year term--\$50
- (c) Renewal fees:
  - (1) Code enforcement officer, two-year renewal--\$75
  - (2) Code enforcement officer in training, one-year renewal--\$50
- (d) The fee to upgrade a registration from code enforcement officer in training to code enforcement officer--\$25.
- (e) A duplicate/replacement fee for a registration issued under this chapter--\$25.
- (f) Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to late renewal fees).
- (g) The dishonored/returned check or payment fee is the fee prescribed under §60.82 of this title (relating to dishonored payment device).
- (h) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to criminal history evaluation letters).

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

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Brian E. Francis  
Executive Director  
Texas Department of Licensing and Regulation  
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For further information, please call: (512) 463-8179

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**CHAPTER 73. ELECTRICIANS**

**16 TAC §73.100**

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 73, §73.100, regarding the Electricians program, with changes to the proposed text as published

in the May 19, 2017, issue of the *Texas Register* (42 TexReg 2619). The rule will be republished.

The Texas Electrical Safety and Licensing Act, §1305.101(a), requires the Commission to adopt, every three years, the revised National Electrical Code (NEC) as the electrical code for the state. The previous rule referenced the 2014 edition of the NEC. The 2017 edition of the NEC was approved by the National Fire Protection Association on August 24, 2016. The adopted amendments are necessary to update the reference to the 2017 edition of the NEC.

The adopted amendments to §73.100 updates the date and code edition for the National Electrical Code. An editorial change is also made for consistency.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the May 19, 2017, issue of the *Texas Register* (42 TexReg 2619). The deadline for public comments was June 20, 2017. The Department received a comment from one individual on the proposed rules during the 30-day public comment period.

Comment--The commenter had questions regarding the journeyman electrician test he took and reciprocity when he relocates.

*Department Response--* The comment was forwarded to the licensing division for response. The Department did not make any changes to the proposed rules based on this comment.

The Electrical Safety and Licensing Advisory Board (Board) met on July 7, 2017, to discuss the proposed amendments and the public comment received. The board recommended adopting the proposed amendments without changes. At its meeting on August 18, 2017, the Commission adopted the proposed rules with changes to the effective date of the Code due to filing requirements.

The amendments are adopted under Texas Occupations Code, Chapters 51 and 1305, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 1305. No other statutes, articles, or codes are affected by the adoption.

*§73.100. Technical Requirements.*

Effective September 15, 2017, the department adopts the National Electrical Code, 2017 Edition as it existed on August 24, 2016, as adopted by the National Fire Protection Association, Inc.

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

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## CHAPTER 75. AIR CONDITIONING AND REFRIGERATION

### 16 TAC §75.110

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 75, §75.110, regarding the Air Conditioning and Refrigeration program, without changes to the proposed text as published in the June 16, 2017, issue of the *Texas Register* (42 TexReg 3055). The rules will not be republished.

The Air Conditioning and Refrigeration Contractor License Law, Tex. Occ. Code §1302.101(a), requires the Commission to adopt rules for the practice of air conditioning and refrigeration contracting that are at least as strict as the standards provided by the Uniform Mechanical Code and the International Mechanical Code. These codes define the standard of practice for ACR contracting, and are used by the Texas Department of Licensing and Regulation (Department) compliance staff to evaluate the mechanical integrity and proper installation and service of air conditioning and refrigeration systems. The adopted amendments are necessary to align the program's applicable codes with currently recognized national standards and to provide clarity and consistency for the Department's licensees.

The adopted amendments to §75.110 update the date and code editions from 2012 to 2015 for the Uniform Mechanical Code, the International Mechanical Code, International Residential Code, and other applicable codes, including the International Energy Conservation Code and International Fuel Gas Code.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the June 16, 2017, issue of the *Texas Register* (42 TexReg 3055). The deadline for public comments was July 27, 2017. The Department received a comment from one individual on the proposed rules during the 30-day public comment period.

Comment--The commenter supports the proposed amendments to the rule.

*Department Response*--The Department appreciates this comment. The Department did not make any changes to the proposed rules based on this comment.

The Air Conditioning and Refrigeration Contractors Advisory Board (Board) met on July 25, 2017, to discuss the proposed amendments and the public comment received. However, the Board lacked a quorum and could not vote on the rule proposal. At its meeting on August 18, 2017, the Commission adopted the proposed rules without changes.

The amendments are adopted under Texas Occupations Code, Chapters 51 and 1302, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 1302. No other statutes, articles, or codes are affected by the proposal.

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

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## CHAPTER 78. MOLD ASSESSORS AND REMEDIATORS

### 16 TAC §§78.1, 78.10, 78.20 - 78.22, 78.24, 78.25, 78.30, 78.40, 78.50, 78.52, 78.54, 78.56, 78.58, 78.60, 78.62, 78.64, 78.66, 78.68, 78.70, 78.72, 78.74, 78.80, 78.85, 78.90, 78.92, 78.100, 78.110, 78.120, 78.130, 78.140, 78.150

The Texas Commission of Licensing and Regulation (Commission) adopts new rules at 16 Texas Administrative Code (TAC), Chapter 78, §§78.1, 78.20, 78.21, 78.24, 78.25, 78.30, 78.40, 78.50, 78.52, 78.54, 78.58, 78.60, 78.66, 78.68, 78.72, 78.90, 78.92, 78.100, 78.120, 78.130, 78.140 and 78.150, regarding the Mold Assessors and Remediators program, without changes to the proposed text as published in the April 21, 2017, issue of the *Texas Register* (42 TexReg 2057). The rules will not be republished.

The Commission also adopts new rules at 16 TAC, Chapter 78, §§78.10, 78.22, 78.56, 78.62, 78.64, 78.70, 78.74, 78.80, 78.85 and 78.110, regarding the Mold Assessors and Remediators program, with changes to the proposed text as published in the April 21, 2017, issue of the *Texas Register* (42 TexReg 2057). The rules will be republished.

The Texas Legislature enacted Senate Bill 202 (S.B. 202), 84th Legislature, Regular Session (2015), which, in part, transferred 13 occupational licensing programs in two phases from the Department of State Health Services (DSHS) to the Commission and the Texas Department of Licensing and Regulation (Department). The Commission and Department completed the Phase 1 transition of seven programs on October 3, 2016.

Under Phase 2, the following six programs are being transferred from DSHS to the Commission and the Department: (1) Laser Hair Removal, Texas Health and Safety Code, Chapter 401, §§401.501 - 401.522; (2) Massage Therapy, Texas Occupations Code, Chapter 455; (3) Code Enforcement Officers, Texas Occupations Code, Chapter 1952; (4) Sanitarians, Texas Occupations Code, Chapter 1953; (5) Mold Assessors and Remediators, Texas Occupations Code, Chapter 1958; and (6) Offender Education Programs, Alcoholic Beverage Code, Chapter 106, §106.115 (Alcohol Education Program for Minors); Transportation Code, Chapter 521, §§521.374 - 521.376 (Drug Offender Education Program); Code of Criminal Procedure, Chapter 42A, Articles 42A.403, 42A.405 and 42A.406 (formerly Chapter 42, Article 42.12, §13(h)) (DWI Education Program); and Code of Criminal Procedure, Chapter 42A, Articles 42A.404, 42A.405, and 42A.406 (formerly Chapter 42, Article 42.12, §13(j)) (DWI Intervention Program). The statutory amendments transferring regulation of these six Phase 2 programs from DSHS to the Commission and the Department will take effect on September 1, 2017.

The new rules were adopted to enable the Commission and the Department to regulate the six Phase 2 programs listed above. The adopted new rules provide for the Department to perform the various functions, including licensing, compliance, and enforcement, necessary to regulate these transferred programs. The effective date of the adopted rules is November 1, 2017. The effective date will coincide with the completion of the transfer of the programs to the Commission and the Department.

The adopted new §78.1 provides the statutory authority for the Commission and the Department to regulate the mold assessors and remediators program.

The adopted new §78.10 creates the definitions to be used in the mold assessors and remediators program.

The adopted new §78.20 explains when credentials are required.

The adopted new §78.21 establishes the basic conditions for all applicants for a credential.

The adopted new §78.22 establishes the renewal requirements.

The adopted new §78.24 provides the qualifications and conditions for taking licensing examinations.

The adopted new §78.25 establishes continuing education requirements and the procedure for verifying compliance with them.

The adopted new §78.30 provides supplemental requirements and clarity regarding the statutory exceptions and exemptions in the mold assessors and remediators program.

The adopted new §78.40 establishes the insurance coverage requirements for licensees.

The adopted new §78.50 details requirements for the mold assessment technician license.

The adopted new §78.52 creates the requirements for the mold assessment consultant license.

The adopted new §78.54 establishes the requirements for a mold assessment company license.

The adopted new §78.56 creates the mold remediation worker registration.

The adopted new §78.58 establishes the requirements for the mold remediation contractor license.

The adopted new §78.60 creates the requirements for a mold remediation company license.

The adopted new §78.62 establishes the requirements for a mold analysis laboratory license.

The adopted new §78.64 details the requirements for a mold training provider accreditation.

The adopted new §78.66 explains the requirements and process for approval of mold training courses and instructors.

The adopted new §78.68 explains the required content of mold training courses.

The adopted new §78.70 establishes responsibilities of all credentialed persons in the mold assessors and remediators program.

The adopted new §78.72 establishes a code of ethics for credentialed persons in the mold assessors and remediators program.

The adopted new §78.74 details recordkeeping and retention requirements.

The adopted new §78.80 establishes all applicable fees in the mold assessors and remediators program.

The adopted new §78.85 provides for and describes the authority of the department to inspect and investigate any person for compliance with the proposed rules.

The adopted new §78.90 provides for administrative penalties and sanctions.

The adopted new §78.92 provides the authority to enforce this chapter and any provision found within.

The adopted new §78.100 explains the minimum required work practices and procedures for mold assessment.

The adopted new §78.110 provides for notifying the department of mold remediation activities.

The adopted new §78.120 explains the minimum required work practices and procedures for mold remediation.

The adopted new §78.130 details mold remediation requirements for heating, ventilation and air conditioning systems.

The adopted new §78.140 establishes the minimum requirements for post-remediation assessment and clearance.

The adopted new §78.150 details requirements for photographs, certificates of mold damage remediation and duties of property owners following mold remediation projects.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the April 21, 2017, issue of the *Texas Register* (42 TexReg 2057). The deadline for public comments was May 22, 2017. The Department held a public hearing during the public comment period on May 11, 2017. During the 30-day public comment period the Department received comments from the following groups and associations: American Industrial Hygiene Association (AIHA); Enviro-Con Services, Inc.; GEBCO Associates; Mold Inspection Sciences Texas; Moldlab, Ltd.; Moody Labs; Occupational-Environmental Control, Inc.; and Sun City Analytical, Inc., four of whom made comments during the public hearing.

**Comment--**One commenter recommended that the provision in §78.25(f) that allows a Mold Assessment Technician (MAT) to take a continuing education course offered for either a MAT or a Mold Assessment Consultant (MAC) to meet the MAT continuing education requirement should be removed. A second commenter advocated keeping this provision as written.

**Department Response--**The Department disagrees with removing this provision because it allows MATs to choose to take the MAC course to fulfill the continuing education requirement if, for example, there is no MAT course available. The rule does not require accredited training providers to allow MATs to take MAC continuing education courses, nor does it permit providers to combine the MAT and MAC courses or to issue MAT continuing education certificates to students who take the MAC continuing education course. Further, the rule does not require any MAT to take a MAC continuing education course, but simply provides a choice to do so. The Department did not make any changes to the rule in response to these comments.

**Comment--**One commenter stated the rule is not clear about whether mold training courses expire.



*Department Response*--Mold training courses do not expire but the Department's requirements as to whether a course will be accepted to fulfill training requirements for renewal of a credential depends in part upon the date on which a course is completed. The rule requires that date to be included on all training certificates. Accredited training providers are not required to verify whether persons taking training courses can successfully use the training to qualify for a new or renewal credential. The Department did not make any changes to the rule in response to this comment.

*Comment*--One commenter recommended that training providers should be required to submit schedules of the courses they will offer or this will hamper auditing and enforcement to ensure courses are valid.

*Department Response*--The Department is authorized to conduct audits of training providers and will respond to complaints regarding Mold Training Providers (MTP). The Department did not make any changes to the rule in response to this comment.

*Comment*--One commenter stated the term "license" is more appropriate than "accreditation" for MTPs and the terminology in the rules and the type of credential should be changed accordingly.

*Department Response*--The law provides for accreditation but not licensing of MTPs in Occupations Code §1958.106. A change to the statute would be necessary to move from an accreditation to a license. The Department did not make any changes to the rule in response to this comment.

*Comment*--One commenter recommended that the content of continuing education courses should not be limited to that currently required by the rules and offered by MTPs, but should be expanded to allow training in more areas related to air quality and industrial hygiene in training courses or other types of venues. A second commenter recommended that only continuing education courses offered by Department-accredited MTPs should be acceptable to meet training requirements. This commenter referenced the continuing education requirements in 16 TAC Chapter 59.

*Department Response*--The Department evaluates the content of required training courses on an ongoing basis and makes needed changes and upgrades accordingly. However; modifying the required content of the mold training courses, or broadening the continuing education requirements to encompass other providers and non-mold related content, is outside of the scope of this rulemaking. Licensees of course are encouraged to take additional training and to recommend to the Department new and relevant content for training courses. MTPs may likewise obtain approval from the Department to update or supplement the content of the courses they provide. The continuing education requirements in 16 TAC Chapter 59 are applicable to only some of the Department's programs and the mold program is not among them. The Department did not make any changes to the rule in response to these comments.

*Comment*--One commenter suggested the definition of "training hours" in §78.10(45) should be amended to include lunch as part of the eight-hour training day.

*Department Response*--The Department may explore the demand for the option of a "working lunch" during the training day in the future, but such a change is outside the scope of this rulemaking. The Department did not make any changes to the rule in response to this comment.

*Comment*--One commenter recommended the requirements for mold training instructors in §78.66(e), should include an option that does not require hands-on experience in mold-related activities in order to teach mold training courses if the person is otherwise highly qualified. If a person has experience in directly related fields and is a professional, such as an architect, particularly a specialist in building sciences, a building envelope specialist, or professional engineer, then that person should be considered qualified to teach mold training courses even if the person does not have hands-on mold-related activity experience. The commenter suggests textual amendments to §78.66(e)(2) to so expand the options for qualification as a MTP instructor.

*Department Response*--The instructor qualifications may need to be evaluated to determine if the recommended change should be made. However, amendment of the instructor qualifications is outside the scope of this rulemaking. The Department did not make any changes to the rule at this time in response to this comment.

*Comment*--One commenter suggested that the mold program should have an advisory committee and the commenter suggests a change to the statute to accomplish this, or to form one under the authority provided in Government Code §2110.002 {sic} (2110.0012).

*Department Response*--No provision for the creation of an advisory committee for the mold assessors and remediators program currently exists in Occupations Code, Chapter 1958. The formation of an advisory committee would represent a significant change to the mold licensing program, and would be outside of the scope of this rulemaking. The Department did not make any changes to the rule in response to this comment.

*Comment*--One commenter stated that §78.70(c) requires the Consumer Mold Information Sheet (CMIS) to be provided to the property owner or the property owner's designee, but it is sometimes not possible to determine who is the property owner or its designee. The commenter recommends amending the requirement by adding "if known." A second commenter states that the CMIS should be required to be provided only to the client and not to the property owner.

*Department Response*--The requirement for provision of the CMIS to both the client and the property owner is unchanged from this requirement in the DSHS rules. The provision of the CMIS to the property owner, especially when the client is a tenant, serves an important purpose by ensuring all parties are aware of mold-related activities to be conducted at a property and the choices available to them. The Department did not make any changes to the rule in response to this comment.

*Comment*--One commenter stated the meaning of "first contact" is unclear as written in proposed §78.70(c)(1) which requires the CMIS to be provided on the earlier of the first contact with the client, potential client, property owner or it's designee, or at least one calendar day before the initiation of mold-related activity.

*Department Response*--"Contact" should be interpreted in the usual sense of the word. The Department does not prohibit any delivery method for providing the CMIS, including hand delivery, mail or delivery service, or any electronic method. If the first contact and the initiation of mold related activities occurs on the same day, then the provision of the CMIS on that day is authorized by the rule if it precedes the initiation of mold-related activities. The purpose of the CMIS is to provide information to the person before a decision is made regarding engaging the licensee for services. A person who declines the services of

the licensee need not be considered a "potential client" for purposes of providing the CMIS. The Department did not make any changes to the rule in response to this comment.

Comment--One commenter stated the requirement to provide the CMIS applies only to mold remediation companies and not to mold consulting companies.

*Department Response*--The requirement to provide the CMIS is located in §78.70(c) and applies to all individual and business entity mold licensees and all mold-related assessment and remediation activities. The Department did not make any changes to the rule in response to this comment.

Comment--One commenter stated that the requirement in §78.62(c)(4) for all individuals who will analyze mold samples to have a bachelor's degree in microbiology or biology in addition to the required training and experience is burdensome and unnecessary. The commenter recommends requiring the bachelor's degree "or" the training and experience as provided in §78.62(c)(4).

*Department Response*--Section 78.62(c) is identical to the existing DSHS requirement. The need for changes to the required minimum qualifications of Mold Analysis Laboratory (LAB) personnel may be evaluated by the Department as part of its administration of the mold licensing program as it begins operation but is outside the scope of this rulemaking. The Department did not make any changes to the rule in response to this comment.

Comment--One commenter suggested §78.62(c)(2) is not clear as to the meaning of "a program deemed equivalent by the department for the preparation and analysis of mold." The criteria that will be applied to determine if a program is equivalent should be defined.

*Department Response*--The Department will review the equivalency of an accreditation or certification body to the AIHA Environmental Microbiology Laboratory Accreditation Program on a case-by-case basis. The Department's Compliance Division makes these determinations. The Department did not make any changes to the rule in response to this comment.

Comment--One commenter stated the word "accredited" should be changed to "certified" in §78.62(c)(3).

*Department Response*--The Department agrees and has made this change to the rule and additional corresponding changes in §78.62(a)(1), (f)(4), (f)(4)(A), and (f)(4)(B).

Comment--One commenter recommended that a requirement for proof of ongoing proficiency for applicants for a LAB license should be added to rule §78.62(e). A second commenter recommends that the mold rules should require LABs to demonstrate competency and proficiency in each type of analysis they conduct: direct exam analysis, viable culture analysis, or both.

*Department Response*--Rule §78.62(e)(2) requires LAB license applicants to demonstrate that they meet one of the criteria under 78.62(c) to qualify for an initial LAB license. Rule §78.62(f) requires the LAB to maintain any accreditation or certification under §78.62(c) and to notify the department and cease providing services if it does not maintain its accreditation or certification. Further, all renewal applicants must again demonstrate compliance with the qualification requirement in §78.62(c). The Department acknowledges that some of the methods by which LABS qualify for licensure do not have requirements to demonstrate ongoing proficiency and will take this under consideration as it commences to regulate LABs. The Department notes that there

is no history of complaints regarding LAB proficiency. The addition of the recommended competency and proficiency requirements is outside the scope of this rulemaking. The Department did not make any changes to the rule in response to these comments.

Comment--One commenter stated the definition of "mold analysis" in §78.10(23) is too specific for the analysis of general air samples collected using Alergenco-D/Air-O-Cell-like cassettes, which do not necessarily allow spore identification to the genus level.

*Department Response*--The Department welcomes additional information about the substance of this comment because the complaint is unclear. A LAB may specify the types of media on which collection should not be made if use of that media is unsatisfactory for analysis. The definition identifies the activities that are considered to be mold analysis but does not establish minimum requirements for mold analysis. Punctuation has been added to clarify the text of the definition.

Comment--Two commenters stated that Certified Industrial Hygienists should be exempted from the additional educational and training requirements proposed in the rule.

*Department Response*--The Department did not change the educational or training requirements from those currently required by DSHS. The comments do not specify which requirements should be removed or waived for the different credentials available in the mold program if a person is a Certified Industrial Hygienist. The Department welcomes further information on which to evaluate the qualifications of Certified Industrial Hygienists and to determine whether certain rule requirements could be reasonably removed or made inapplicable to them in the future. Such changes are, however, outside the scope of this rulemaking so no change has been made to the rule in response to the comments.

Comment--Two commenters recommended that the term "certification as an industrial hygienist" should be replaced with "Certified Industrial Hygienist" in the rule.

*Department Response*--The Department anticipates examining this certification and the title of Certified Industrial Hygienist to determine if this change would be appropriate, but it is outside the scope of this rulemaking. The Department did not make any changes to the rule in response to this comment.

Comment--One commenter stated the requirement for those licensed to perform mold remediation and assessment to maintain an office in Texas should be eliminated.

*Department Response*--Texas Occupations Code §1958.157 requires all licensees to maintain an office in Texas and, therefore, can only be removed by the Texas Legislature. The Department did not make any changes to the rule in response to this comment.

Comment--One commenter stated the mold law in the state of Texas should be rescinded in its entirety.

*Department Response*--The mold statute, Occupations Code, Chapter 1958, requires the Department to regulate mold assessors and remediators. The statute can only be repealed by the Texas Legislature. The Department did not make any changes to the rule in response to this comment.

Comment--One commenter stated the funds collected by DSHS from persons credentialed in the mold assessors and remediators program are required by law to follow the program and need

to be accounted for. The funds must be used for the purpose for which they were collected and may not be diverted or misappropriated.

*Department Response*--The Department's rules for the mold assessors and remediators licensing program govern the operation of the program in relation to licensing, qualifications, work practices, enforcement, and other aspects of the regulation of credentialed persons. The collection, handling, and use of revenues received from persons credentialed under the mold program is regulated through other avenues and is not a subject of the program's administrative rules. Therefore, this subject is outside of the scope of this rule. The Department did not make any changes to the rule in response to this comment.

*Comment*--One commenter recommended the rule should be modified to allow a thorough visual inspection to be sufficient as the post-remediation clearance criteria, with the use of microbial air samples as the secondary verification method.

*Department Response*--The certificate of mold remediation that must be provided to the property owner as described in Occupations Code, §1958.154 requires a statement that the mold has been remediated based on visual, procedural, and analytical evaluation. Therefore, the clearance criteria may not be limited only to the visual inspection. The Department did not make any changes to the rule in response to this comment.

*Comment*--One commenter suggested the rule should include references to technical publications that describe industry accepted methods for completing thorough mold remediation projects. The proposed regulation refers to "nationally accepted" and "nationally recognized" analytical methods in §78.100(d)(1) and §78.100(i)(1). These terms should be replaced with "industry accepted" or "industry recognized."

*Department Response*--The Department does not typically recommend third party materials and leaves it to the discretion of its licensees to evaluate and use these sources in keeping with their own professional judgment. As the Department implements the mold assessors and remediators program, it will review and evaluate the technical requirements and criteria, and information about analytical methods, techniques, standards, and practices as necessary to examine the need for revision to the program rules. However, these types of changes are outside the scope of this rulemaking. The Department did not make any changes to the rule in response to this comment.

*Comment*--One commenter suggested that §78.100(d) needs to include photographs taken during the assessment and approximate quantification in square feet of the mold contamination.

*Department Response*--The Department agrees that the minimum requirements for performance of mold assessment should be evaluated to determine if the recommended changes would have utility. However, amendment of these requirements is outside the scope of this rulemaking. The Department did not make any changes to the rule at this time in response to this comment.

After internal discussions, the Department has modified the rule text in §78.22(d)(3) and §78.56(b)(3) and (d)(2) to reflect that mold remediation workers must supply documentation that their employer carries the required insurance only if requested by the Department.

In addition, several internal discussions were had relating to notifications of mold remediation activity. The Department has confirmed that an online notification system will be operational when the mold assessors and remediators program transfers to the

Department. Textual changes have been made to enhance the understandability and consistency of the rules relating to mold remediation notifications. The online notification system eliminates the need for licensees to notify by alternative methods and to follow up to confirm receipt of notifications. Consequently, some of the requirements related to notification submission have been updated to remove outdated requirements and to be more specific. The proposed rule indicated that notifications must be made by telephone, in writing, or in a manner specified by the department. The text changes now reflect that the method the Department will use to accept notifications and amendments of notifications will be its online system. The rule text regarding emergency notifications is amended to simplify and clarify that all usual notification requirements apply to an emergency except for the timing of the initial notification.

During the rulemaking process the Department conducted a fee analysis for the Mold Assessors and Remediators program. Section 51.202 of the Texas Occupations Code requires the Commission to set fees in amounts reasonable and necessary to cover the costs of administering the programs under the Department's jurisdiction. Additionally, Article VIII, Section 2 of the General Appropriations Act requires the Department's revenue cover the cost of the Department's appropriations and other direct and indirect costs. The Department found that the fees in the proposed rules are above the amounts that will be required for the Department to cover its costs. Therefore, the Department has reduced the fees for all new and renewal credentials from between 10% and 25%, or from \$10 to \$250 per credential. In addition, the fee for notification of a mold remediation project that is not in an owner-occupied residential dwelling has been reduced from \$100 to \$25, consistent with the unchanged \$25 notification fee for projects in owner-occupied residential dwelling units. The decreased fees will not adversely affect the administration and enforcement of the program. The reduction in the notification and renewal fees will result in approximately \$210,150 of lost revenue to the state each year.

At its meeting on August 18, 2017, the Commission adopted the proposed rules with changes as recommended by the Department.

The new rules are adopted under Texas Occupations Code, Chapters 51 and 1958, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 1958. No other statutes, articles, or codes are affected by the adoption.

#### *§78.10. Definitions.*

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

(1) Accredited training program--A training program that has been accredited by the department to provide training for persons seeking licensure or registration under this chapter.

(2) Act--The Texas Occupations Code, Chapter 1958, concerning mold assessment and remediation.

(3) Allied field--Mold assessment, mold remediation, and any field whose principles and practices are applicable to mold assessment or mold remediation, including asbestos abatement, lead abatement, industrial hygiene, building sciences, public health, and environmental remediation.

(4) Assessor--A person who conducts mold assessment as defined in this section and who is licensed under this chapter as a mold assessment technician, mold assessment consultant, or mold assessment company.

(5) Building sciences--The field of study covering the design, construction, management, and performance of building systems, including structures, enclosures, electrical and mechanical systems, environmental systems (such as temperature and moisture control), safety systems (such as fire suppression and alarms), lighting, acoustics, and diagnosis and correction of problems with building systems.

(6) Certificate of Mold Damage Remediation--A certificate adopted by the Texas Department of Insurance, commonly referred to as Certificate of Mold Damage Remediation and Form MDR-1.

(7) Commission--The Texas Commission of Licensing and Regulation.

(8) Consumer Mold Information Sheet--A document prepared and made available by the department that describes the persons who are required to be licensed under this chapter and provides information on mold assessment and mold remediation, including how to contact the department for more information or to file a complaint.

(9) Containment--A component or enclosure designed or intended to control the release of mold or mold-containing dust or materials into surrounding areas in the building. The broad category of containment includes such sub-categories as walk-in containment, surface containment (such as plastic sheeting), and containment devices (such as wall-mounted glove boxes).

(10) Containment area--An area that has been enclosed to control the release of mold or mold-containing dust or materials into surrounding areas.

(11) Contiguous--In close proximity; neighboring.

(12) Contiguous square feet--See "Total surface area of contiguous square feet."

(13) Credential--A license, registration, or accreditation issued under this chapter.

(14) Department--The Texas Department of Licensing and Regulation.

(15) Employee--An individual who is paid a salary, wage, or remuneration by another person or entity for services performed and over whom the person or entity exerts supervision or control as to the place, time, and manner of the individual's work. A contractor or subcontractor who is performing work under a contractual agreement with a person is not an employee of the person unless the agreement specifies otherwise.

(16) Executive director--The executive director of the department.

(17) Facility--Any institutional, commercial, public, governmental, industrial or residential building.

(18) Indoor air--Air within the envelope of a building, including air in spaces normally occupied by persons in the building but excluding air in attics and crawl spaces that are vented to the outside of the building.

(19) Indoor mold--Mold contamination that was not purposely grown or brought into a building and that has the potential to affect the indoor air quality of the building.

(20) License--Any license issued under this chapter. The term "license" does not include a registration, accreditation, or approval issued under this chapter.

(21) Mold--Any living or dead fungi or related products or parts, including spores, hyphae, and mycotoxins.

(22) Managing agent--A company or individual that manages a residential or commercial building for an owner.

(23) Mold analysis--The examination of a sample collected during a mold assessment for the purpose of:

(A) determining the amount or presence of, or identifying the genus or species of, any living or dead mold or related parts (including spores and hyphae) present in the sample; or

(B) growing or attempting to grow fungi for the purposes of subparagraph (A); or

(C) identifying or determining the amount or presence of any fungal products, including but not limited to mycotoxins and fungal volatile organic compounds, present in the sample.

(24) Mold analysis laboratory--A person, other than an individual, that performs mold or mold-related analysis on a sample collected to determine the presence, identity, or amount of indoor mold in the sample.

(25) Mold assessment--Activity that involves:

(A) an inspection, investigation, or survey of a dwelling or other structure to provide the owner or occupant with information regarding the presence, identification, or evaluation of mold; or

(B) the development of a mold management plan or mold remediation protocol; or

(C) the collection or analysis of a mold sample.

(26) Mold assessment report--A document prepared by a licensed mold assessment consultant or licensed mold assessment technician for a client that describes any observations made, measurements taken, and locations and analytical results of samples taken by an assessment consultant or by an assessment technician during a mold assessment. An assessment report can be either a stand-alone document or a part of a mold management plan or mold remediation protocol prepared by a mold assessment consultant.

(27) Mold management plan--A document prepared by a licensed mold assessment consultant for a client that provides guidance on how to prevent and control indoor mold growth at a location.

(28) Mold-related activities--The performance of mold assessment, mold remediation or any other related activities.

(29) Mold remediation--The removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold or mold-contaminated matter that was not purposely grown at a location. Preventive activities include those intended to prevent future mold contamination of a remediated area, including applying biocides or anti-microbial compounds.

(30) Mold remediation protocol (mold remediation work analysis) --A document, prepared by a licensed mold assessment consultant for a client, that specifies the estimated quantities and locations of materials to be remediated and the proposed remediation methods and clearance criteria for each type of remediation in each type of area for a mold remediation project.

(31) Mold remediation work plan--A document, prepared by a licensed mold remediation contractor that provides specific in-

structions and/or standard operating procedures for how a mold remediation project will be performed.

(32) Office--A stationary physical location assigned a street address by the United States Postal Service, where a licensee or an employee of a licensee may be contacted to conduct business related to mold assessment and/or mold remediation.

(33) Person--An individual, corporation, company, contractor, subcontractor, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, governmental entity, or any other association of individuals.

(34) Project--All activities that involve mold-related activities in a building or designated area of a building for which a specific start-date and a specific stop-date is provided that covers the mold remediation.

(35) Remediator--A person who performs mold remediation as defined in this section and who is credentialed under this chapter as a mold remediation worker, mold remediation contractor, or mold remediation company.

(36) Residential dwelling unit--A detached single-family dwelling; an attached single-family dwelling in a building that contains two or more separate single-family dwellings; or a bedroom in group housing. Examples of residential dwelling units include single homes, mobile homes (house trailers), duplexes, apartments, and condominiums. In group housing, such as dormitories, fraternity or sorority houses, and boarding houses, each bedroom is a residential dwelling unit.

(37) Residential property--A property containing one or more residential dwelling units intended to provide living quarters for more than a transitory period, including a residential property that is vacant or under construction. A residential property includes dormitories and employee housing in a non-residential setting (e.g., staff housing at an institutional or commercial facility). Residential properties do not include:

(A) lodgings (such as hotels and motels) that rent units on a transient basis;

(B) institutional facilities that provide care or oversight for residents or inmates (such as hospitals, nursing homes, homes for children with physical or mental disabilities, mental institutions, jails, prisons and detention centers); and

(C) former residential properties that do not currently provide living quarters (such as houses converted into shops or restaurants).

(38) Responsible person--An employee or principal designated by a licensed mold assessment company, mold remediation company, or mold analysis laboratory or by an accredited mold training provider as responsible for its operations and compliance with rules concerning mold-related activities or mold-related training.

(39) Routine cleaning--Cleaning that is done on a regular basis and in a regular course of procedures.

(40) Start-date--The date on which a mold remediation begins. Preparation work is not considered mold remediation.

(41) Stop-date--The date following the day on which final clearance for a mold remediation project is achieved.

(42) Supervise--To direct and exercise control over the activities of a person.

(43) Survey--An activity undertaken in a building to determine the presence, location, or quantity of indoor mold or to determine

the underlying condition(s) contributing to indoor mold contamination, whether by visual or physical examination or by collecting samples of potential mold for analysis.

(44) Total surface area of contiguous square feet--The contiguous area of surface material that needs to be cleaned or removed to remediate visible mold contamination.

(45) Training hours--Hours spent in classroom instruction, hands-on activities, and field trips, including time used for course tests and brief breaks but not including scheduled lunch periods.

(46) Visible--Exposed to view; capable of being seen.

(47) Work analysis--A mold remediation protocol.

(48) Work plan--A mold remediation work plan.

(49) Working days--Monday through Friday, including holidays that fall on those days.

#### §78.22. Renewals.

(a) A person seeking to renew a license, registration, or accreditation shall submit a renewal application before the credential expires.

(b) Each person is responsible for renewing the credential before the expiration date and shall not be excused from paying additional fees or penalties. Failure to receive notification of expiration from the department before the expiration date of the credential shall not excuse failure to apply for renewal or late renewal.

(c) An applicant for renewal of a mold assessment technician, mold assessment consultant, or mold remediation contractor license or for renewal of a mold remediation worker registration must successfully complete a required continuing education course as specified in §78.25 before applying for renewal. The applicant must complete the continuing education course within the two-year term of the credential preceding the expiration date of the credential.

(d) To renew a credential, a person must:

(1) submit a complete renewal application on a department-approved form or in a manner specified by the department;

(2) if renewing an individual license or registration:

(A) successfully pass a criminal history background check;

(B) complete continuing education training as specified in §78.25; and

(C) comply with the continuing education audit process described under §78.25 as applicable;

(3) demonstrate compliance with the requirement for insurance coverage under §78.40, if applicable;

(4) demonstrate compliance with all other applicable requirements under this chapter for the credential being renewed; and

(5) pay the renewal fee required under §78.80.

(e) Credentials must be renewed every two years.

(f) A temporary mold remediation worker registration issued under §78.56(c) may not be renewed.

(g) A person shall not perform any mold-related activity with an expired credential.

#### §78.56. Mold Remediation Worker Registration.

(a) Registration requirement. An individual must be registered as a mold remediation worker to perform mold remediation, except that

an individual licensed under §78.58 is not required to be separately registered under this section.

(b) Eligibility for registration. To obtain a mold remediation worker registration, a person must:

- (1) successfully pass a criminal history background check;
- (2) be at least 18 years old at the time of application;
- (3) demonstrate that the person's employer, if any, is in compliance with the requirement for insurance coverage under §78.40 if requested by the department;
- (4) complete a mold training course as described in §78.68(d); and
- (5) pay the fee required under §78.80.

(c) Temporary registration. The department may issue a temporary registration to an applicant for a mold remediation worker registration if the person:

- (1) has not been convicted of a criminal offense; and
  - (2) meets the requirements of subsection (b)(2)-(5).
- (3) A temporary registration is valid for 21 days and may not be renewed.

(d) Applications. Unless otherwise indicated, an applicant must submit all required information and documentation on department-approved forms or in a manner specified by the department. In addition to fulfilling the requirements in §78.21, an applicant must submit the following required documentation:

- (1) a copy of a course completion certificate for the applicable training course as described in §78.68(d); and
- (2) proof that the applicant's employer, if any, is in compliance with the insurance requirement for licensees specified in §78.40 if requested by the department.

(e) Responsibilities. In addition to all applicable responsibilities in this chapter, a registered mold remediation worker shall use remediation techniques specified in the project mold remediation work plan.

(f) Prohibitions. Registered mold remediation workers are prohibited from:

- (1) performing mold remediation except under the supervision of a licensed remediation contractor; and
- (2) engaging in any mold-related activity requiring licensing as a remediation contractor under this chapter.

#### §78.62. *Mold Analysis Laboratory License.*

(a) Licensing requirement. A person must be licensed in compliance with the provisions of this section to engage in activities listed under subsection (b). A person licensed under this section is not required to be separately licensed under §78.54.

(1) Branch offices that perform mold analysis must fulfill the same equipment and operational standards as the main office that has been licensed and must comply with subsection (c) for the types of analysis they will be performing.

(2) A licensed mold analysis laboratory shall:

- (A) designate one or more individuals as responsible persons;
- (B) not transfer the license to any other person, including to any company that has bought the licensed entity;

(C) apply for a name change on the license within 30 calendar days after a change in name only; and

(D) obtain a new license before performing any mold-related activities when the transfer of a licensed person occurs.

(b) Scope. A person licensed under this section is authorized to analyze samples collected during mold-related activities to:

- (1) determine the presence, identity, or amount of mold present;
- (2) provide any other information regarding the sample that the submitter requests; and
- (3) obtain any other information that the laboratory deems useful.

(c) Qualifications. A person must submit documentation showing that:

(1) the laboratory is accredited by the American Industrial Hygiene Association under the Environmental Microbiology Laboratory Accreditation Program (EMLAP); or

(2) the laboratory is accredited or certified by a program deemed equivalent by the department for the preparation and analysis of mold; or

(3) all individuals who will analyze mold samples are certified by the Pan-American Aerobiology Certification Board or a program deemed equivalent by the department, if the laboratory will analyze only non-culturable samples; or

(4) the laboratory meets the following requirements:

(A) all individuals who will analyze mold samples:

(i) have at least a bachelor's degree in microbiology or biology;

(ii) have successfully completed training in mold analysis offered by the McCrone Research Institute or by a program deemed equivalent by the department, including receiving a training certificate; and

(iii) have a least three years of experience as a mold microscopist; and

(B) mold analysis activity at the laboratory is overseen by a full-time mycologist or microbiologist with:

(i) an advanced academic degree; or

(ii) at least two years of experience in mold analysis.

(d) Eligibility for licensing. To obtain a mold analysis laboratory license, a person must:

(1) comply with subsection (c);

(2) comply with the requirement for insurance coverage under §78.40; and

(3) pay the fee required under §78.80.

(e) Applications. Unless otherwise indicated, an applicant must submit all required information and documentation on department-approved forms or in a manner specified by the department. In addition to fulfilling the requirements in §78.21, an applicant must submit the following required documentation:

(1) proof of compliance with the insurance requirement for licensees specified in §78.40;

(2) evidence acceptable to the department that the laboratory meets one of the qualification requirements under subsection (c);

(3) the name, address, and occupation of each person that has an ownership interest of 10% or more in the laboratory; and

(4) the name of each individual designated by the applicant as a responsible person.

(f) Responsibilities. In addition to the requirements of §78.70 and all other applicable responsibilities in this chapter, the mold analysis laboratory shall:

(1) provide to a client, as applicable, details of analysis methods used, amounts (percentages) analyzed, raw counts for each genus of mold that is identified, magnification used for counting and identifying mold, and culture media and conditions used;

(2) provide the department-issued license number of the laboratory on its analysis reports;

(3) ensure that all individuals who will conduct mold analysis are properly trained in analysis techniques; and

(4) maintain accreditation or certification required under subsection (c). A licensed mold assessment laboratory that loses the required accreditation or certification must:

(A) provide to the department written notification of a change in accreditation or certification status within 30 calendar days after the change; and

(B) cease providing services until the accreditation or certification is reinstated or it otherwise comes into compliance with subsection (c).

#### §78.64. Mold Training Provider Accreditation.

(a) Accreditation requirement. A person must be accredited as a mold training provider to offer mold training courses that are prerequisites for licensing.

(b) Authorizations and Conditions. The following shall apply to issuance of accreditations under this section.

(1) Accredited training providers:

(A) may not transfer the accreditation to any other person, including to any company that has bought the accredited entity; and

(B) must apply for a name change within 30 calendar days after a change in the name of the accredited entity only.

(2) A person must obtain accreditation before providing training when the transfer of an accredited person occurs.

(3) A person shall not advertise, offer, or provide a training course for fulfillment of requirements for a license or renewal of a license under this chapter unless the department or the department's designee has approved the course under §78.66.

(A) Accredited training providers may offer, without department approval, mold remediation worker training courses and other courses relevant to mold-related activities, including, but not limited to, courses on respirator training and compliance.

(B) Accredited training providers shall use only approved instructors for mold remediation worker training courses.

(4) Accredited training providers must offer approved courses as described below.

(A) Each training course shall address only one license type and shall not be combined with other areas of licensure.

Initial training courses shall not be combined with continuing education courses. This prohibition against combined training applies to hands-on training sessions as well as other aspects of the course.

(B) Training providers shall conduct each course in one language throughout and a course shall not be combined with the same course taught in another language. A training provider may offer a course in a language other than English if all instructors and guest speakers are fluent in that language and all books, training materials, and course tests are in that language.

(C) Accredited mold training providers are authorized to offer:

(i) a mold assessment technician or mold assessment consultant training course to persons applying for a mold assessment technician license; and

(ii) a mold assessment technician or mold assessment consultant continuing education training course to persons renewing a mold assessment technician license.

(5) Training providers shall not conduct any approved course for more than eight training hours (including hands-on portions) in a calendar day.

(6) A training provider must require instructors and guest speakers to present in person during at least 50% of the classroom instruction and all of the hands-on instruction. The training provider may allow an instructor or guest speaker to use training films and videotapes, but audiovisual materials shall not be used as substitutes for the required in-person presentations or the hands-on instruction.

(7) Courses requiring hands-on practical training must be presented in an environment that permits each student to have actual experience performing tasks associated with the mold-related activity.

(8) The maximum number of students in a lecture session shall be 40. Hands-on training sessions shall maintain a student-to-instructor ratio of not more than 15 to one and must be conducted so that the instructor is able to assist and evaluate each student individually. Field trips shall maintain a student-to-instructor ratio of not more than 40 to one.

(9) Accredited training providers shall conduct approved training courses in facilities acceptable as classrooms and conducive to learning. The facilities must have restrooms available for the students.

(10) Course instructors shall maintain an attendance record for each course and take attendance at the beginning of each four-hour instruction segment. A student who is absent from more than 10% of the course instruction, including hands-on sessions and field trips, is ineligible to complete the course.

(11) An accredited training provider shall verify and keep a written record of the student scores on each course test.

(A) The training provider shall have a written policy concerning the administration of tests, including allowing only one re-test per student for each course.

(B) The use of the same questions for both the original and re-test is prohibited.

(C) Oral course tests are not allowed; however, a training provider may read the written test questions and possible answers to a student who must then mark his or her answer on an answer sheet.

(D) If a student fails the re-test, the student must repeat the course and pass a new test.

(12) An individual instructor shall not train himself/herself to qualify for a license or a registration.

(c) Qualifications. To qualify for an accreditation, a training provider must:

(1) have a written policy concerning refunds and cancellations including cancellation procedures in all languages in which training is offered;

(2) provide the refund and cancellation policy to students before payment of fees;

(3) employ a mold training manager who meets at least one of the following requirements in (A), (B), or (C):

(A) at least two years of experience, education, or training in teaching adults;

(B) a bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, education, or business administration or program management;

(C) at least two years of experience in managing an occupational health and safety training program specializing in environmental hazards; and

(D) has demonstrated experience, education, or training in mold assessment or remediation, lead or asbestos abatement, occupational safety and health, or industrial hygiene;

(4) provide for each course a qualified principal instructor who is:

(A) approved by the training provider; and

(B) meets the requirements under §78.66; and

(5) develop and implement a plan to maintain and improve the quality of the training program. This plan shall contain at least the following elements:

(A) procedures for periodic revision of training materials and the course test to reflect innovations in the field; and

(B) procedures for the training manager's annual review of instructor competency.

(d) Eligibility for accreditation. To obtain a mold training provider accreditation, a person must:

(1) comply with subsection (c); and

(2) pay the fee required under §78.80.

(e) Applications. Unless otherwise indicated, an applicant must submit all required information and documentation on department-approved forms or in a manner specified by the department. In addition to fulfilling the requirements in §78.21, an applicant must submit the following required documentation:

(1) the name, address, and occupation of each person that has an ownership interest of 10% or more in the applicant;

(2) a complete application for approval of at least one training course; and

(3) a description of the training provider's organization, including:

(A) the address of its central office;

(B) the names and business addresses of its principals;

(C) a statement of any affiliation with other mold-related companies doing business in Texas;

(D) a listing of the courses to be offered; and

(E) the identity of the qualified staff member designated as the mold training manager.

(f) Responsibilities. In addition to the requirements of §78.70 and all other applicable responsibilities in this chapter, an accredited mold training provider shall:

(1) present to students all course information and material approved by the department;

(2) furnish appropriate equipment in good working order and in sufficient quantities for each training session in which equipment is required;

(3) maintain the hands-on skills assessment to ensure that it accurately evaluates student performance of the work practices and procedures associated with the course topics contained in §78.68;

(4) maintain the validity and integrity of each course test to ensure that it accurately evaluates the student's knowledge and retention of the course topics;

(5) at the conclusion of each training course, provide to each student who successfully completes the course and passes the required course test, if applicable:

(A) a course completion certificate as described in §78.66(c); and

(B) information regarding the state application and examination process, as applicable;

(6) submit to the department within seven calendar days after the completion date of each course the names and number identifiers of each student who attended the course, on a department-approved form or in a manner specified by the department;

(7) make all records required under this section available for inspection by the department or the department's designee immediately upon conclusion of a course and the course test;

(8) document that each person who receives a certificate has successfully completed a training course in accordance with §78.68 and has achieved a passing score on the written test, if applicable;

(9) for each mold training course for a license or registration, maintain a file that includes:

(A) the training course name;

(B) the date the course was provided;

(C) the subject area of the course taught;

(D) the names of all instructors and guest speakers who taught the course;

(E) a roster of all students in the course;

(F) the names of students receiving certificates;

(G) the certificate numbers; and

(H) the expiration date of the training, if applicable; and

(10) for each training course for a mold license, maintaining in the file:

(A) a copy of the course test;

(B) each student's identified, graded answer sheet;

(C) the date and location where the test was administered; and



(D) the name of the test proctor; and

(11) ensure that all information from the training course and course test, if applicable, corresponds to the information on each person's course completion certificate.

(g) Inspections and audits. The department or its representative or designee may audit any training course. Training providers shall permit the department or its representatives or designees to attend, evaluate, and monitor any training course, without charge or advance notice, to ensure compliance with this chapter.

*§78.70. Responsibilities of Credentialed Persons.*

(a) Persons who are licensed, registered, or accredited under this chapter shall, as applicable:

(1) adhere to the code of ethics prescribed by §78.72;

(2) comply with work practices and procedures of this chapter;

(3) present to the department or the department's representative upon request any identification card, credential, or certificate issued by the department or the department's representative or designee;

(4) comply with the requirements of §1958.155 of the Act (relating to Conflict of Interest; Disclosure Required);

(5) maintain insurance coverage required under §78.40 while engaging in mold-related activities regulated under this chapter;

(6) comply with the recordkeeping responsibilities under §78.74 at both the Texas office and work site locations as applicable;

(7) cooperate with department personnel and representatives or designees of the department in the discharge of their official duties, as described in §78.85; and

(8) notify the department of the following changes no later than the indicated time period after such changes occur, on a department-approved form in a manner specified by the department:

(A) withdrawal of licensed mold remediation contractor or licensed mold remediation company from association with a mold remediation project- five calendar days.

(B) addition of licensed mold remediation company to association with a mold remediation project- one calendar day.

(C) change in mailing address or telephone number- 30 calendar days.

(D) change of persons who have an ownership interest of 10% or more in a person licensed or accredited under this chapter, including additions to or deletions from any list of such persons previously supplied to the department and any changes in the names, addresses, or occupations of any persons on such a list- 30 calendar days.

(E) addition or deletion of a responsible person- 30 calendar days.

(b) All individuals who are required to be licensed or registered under this chapter must have a valid department-issued identification card, credential, or certificate, as applicable, present at the work-site when engaged in mold-related activities.

(c) The licensee overseeing mold-related activities, with the exception of activities performed by a mold analysis laboratory, must ensure that a client and the property owner (or the property owner's designee), if not the same, are provided a copy of the department Consumer Mold Information Sheet (CMIS).

(1) The licensee shall provide the CMIS on the earlier of:

(A) the first contact with the client, potential client, or property owner or designee of the property owner, or

(B) at least one calendar day before the initiation of any mold-related activity.

(2) In an emergency as described in §78.110(e), the licensee shall ensure that the Consumer Mold Information Sheet is provided to the client and the property owner (or the property owner's designee), if not the same, as soon as practicable but not later than the following calendar day after the licensee identifies the emergency.

(d) Credentialed persons are responsible for determining whether the mold-related activities in which they will engage require additional credentials beyond those required under this chapter.

(e) No person shall sell, assign, or transfer a credential, identification card, certificate, or approval issued under this chapter. A person shall obtain a new credential or approval after the transfer of a person that is not an individual before activities requiring a credential or approval under this chapter may be conducted.

(f) The individual that is designated by a licensed mold assessment company or mold remediation company as its responsible person shall not be the responsible person for another licensee with the same category of license.

(g) Consumer complaint information.

(1) A licensed or accredited person shall notify each client of the department's name, web address, mailing address, and telephone number for the purpose of directing complaints to the department.

(2) The information shall be displayed on written documents provided by the credentialed person to a client, property owner, or third party, including mold assessment reports and protocols, mold remediation work plans, bids, estimates, contracts, bills for service, and information brochures.

(h) Office requirement. A person licensed under this chapter must maintain an office in Texas. An individual employed by a person licensed under this chapter is considered to maintain an office in Texas through that employer.

*§78.74. Records.*

(a) Record retention. Records and documents required by this section shall be retained for the time specified in subsection (b)(2) for mold remediation companies and contractors, subsection (c)(2) for mold assessment companies and consultants, subsection (d) for mold analysis laboratories, and subsection (e)(1) for training providers.

(1) Records and documents shall be made available for inspection by the department or the department's representative or designee or any law enforcement agency immediately upon request.

(2) Licensees and accredited training providers who cease to do business shall notify the department in a manner specified by the department at least 30 calendar days before such event to advise how they will maintain all records during the minimum three- or five-year retention period. The department, upon receipt of such notification and at its option, may provide instructions for how the records shall be maintained during the required retention period. A licensee or accredited person shall notify the department that it has complied with the department's instructions within 30 calendar days after their receipt or make other arrangements approved by the department. Failure to comply may result in disciplinary action.

(b) Mold remediation companies and contractors. A licensed mold remediation company shall maintain the records listed in paragraphs (1) and (2) for each mold remediation project performed by the company and the records listed in paragraph (4) for each remediation

worker training session provided by the company. A licensed mold remediation contractor not employed by a company shall personally maintain the records listed in paragraphs (1) and (2) for each mold remediation project performed by the contractor and the records listed in paragraph (4) for each remediation worker training session provided by the mold remediation contractor.

(1) A licensed mold remediation contractor shall maintain the following records and documents on-site at the location of the mold-related activities at a project for its duration:

(A) a current copy of the mold remediation work plan and all mold remediation protocols used in the preparation of the work plan; and

(B) a listing of the names and license or registration numbers of all individuals working on the remediation project.

(2) A licensed mold remediation company shall maintain the following records and documents at a central location at its Texas office for three years following the stop date of each project that the company performs. A licensed mold remediation contractor not employed by a company shall maintain the following records and documents at a central location at his or her Texas office for three years following the stop date of each project that the contractor performs:

(A) a copy of the mold remediation work plan specified under paragraph (1)(A);

(B) photographs of the scene of the mold remediation taken before and after the remediation;

(C) the written contract between the mold remediation company or remediation contractor and the client, and any written contracts related to the mold remediation project between the company or contractor and any other party;

(D) all invoices issued regarding the mold remediation; and

(E) copies of all certificates of mold remediation issued by the company or contractor.

(3) A remediation contractor or company may maintain the records required under paragraphs (1) and (2) in an electronic format. A remediation contractor or company who maintains the required records in an electronic format must provide paper copies of records to a department inspector during an inspection if requested to do so by the inspector.

(4) A licensed mold remediation contractor or licensed mold remediation company that provides mold remediation worker training to meet the requirements under §78.68(d) shall maintain copies of the required training documents at a central location at its Texas office.

(c) Mold assessment companies and consultants.

(1) A licensed mold assessment company shall maintain the following records and documents at a central location at its Texas office for the time period required under paragraph (2) for each project that the company performs. A licensed mold assessment consultant not employed by a company shall maintain the following records and documents at a central location at his or her Texas office for the time period required under paragraph (2) for each project that the contractor performs:

(A) the name and mold credential number of each of its employees who worked on the project and a description of each employee's involvement with the project;

(B) the written contract between the mold assessment company or consultant and the client;

(C) all invoices issued regarding the mold assessment;

(D) copies of all laboratory reports and sample analyses;

(E) copies of all photographs required under §78.140;

(F) copies of all mold remediation protocols and changes prepared as a result of mold assessment activities; and

(G) copies of all passed clearance reports issued by the company or consultant.

(2) For each project, a licensed mold assessment company or consultant shall maintain all the records listed in paragraph (1) until:

(A) the company or consultant issues a mold assessment report, management plan, or remediation protocol to a client, if the company or consultant performs only the initial assessment for the project; or

(B) the company or consultant issues the final status report to the client, if a final status report is issued; or

(C) the company or consultant provides the signed Certificate of Mold Damage Remediation to a mold remediation contractor or company, if a Certificate of Mold Damage Remediation is provided.

(d) Mold analysis laboratories. A licensed mold analysis laboratory shall maintain copies of the results, including the sample identification number, of all analyses performed as part of a mold assessment or mold remediation for three years from the date of the sample analysis.

(e) Training providers. Accredited training providers shall comply with the following record-keeping requirements. The training provider shall maintain the records in a manner that allows verification of the required information by the department or the department's representative or designee.

(1) The training provider shall maintain records for at least five years from the date of each training course.

(2) A training provider may maintain the records required under paragraph (1) in an electronic format. A training provider who maintains the required records in an electronic format must provide paper copies of records to a department inspector during an inspection if requested to do so by the inspector.

§78.80. Fees.

(a) Unless otherwise specified, the fees established in this section must be paid to the department before a license, registration, or accreditation will be issued or renewed.

(b) Schedule of Fees.

(1) Fees for Notifications:

(A) Notification of mold remediation, initial: owner-occupied residential dwelling unit--\$25

(B) Notification of mold remediation, initial: other than owner-occupied residential dwelling unit--\$25

(2) Fees for Credentials:

(A) Mold assessment technician license or renewal--\$150

(B) Mold assessment consultant license or renewal--\$500

(C) Mold assessment company license or renewal--\$850

(D) Mold remediation worker registration or renewal--\$50

(E) Mold remediation contractor license or renewal--\$450

(F) Mold remediation company license or renewal--\$850

(G) Mold analysis laboratory license or renewal--\$750

(H) Mold training provider accreditation or renewal--\$750

(3) Fees for Approval of Training Courses:

(A) Application for approval of initial mold training course--\$100

(B) Application for approval of initial mold training course when submitted concurrent with application for mold training provider initial accreditation--\$0

(C) Application for approval of continuing education mold training course--\$100

(D) Application for approval of continuing education mold training course when submitted concurrent with application for mold training provider initial accreditation--\$0

(4) Fee for a replacement or duplicate credential, certificate, or identification card --\$25

(c) Late renewal fees for licenses, registrations, and accreditations issued under this chapter are prescribed under §60.83 of this title (relating to Late Renewal Fees).

(d) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).

(e) The fee for a dishonored/returned check or payment is the fee prescribed under §60.82 of this title (relating to Dishonored Payment Device).

(f) All fees paid to the department are nonrefundable.

§78.85. *Inspections and Investigations.*

(a) The department or the department's representative or designee may inspect or investigate the business practices of any persons involved with mold-related activity for compliance with this chapter.

(b) The department or the department's representative or designee, upon presenting identification, shall have the right to enter any area or environment, including but not limited to any containment area, building, construction site, storage or office area, or vehicle to review records, to question any person, or to locate, identify, or assess areas of mold growth for the purpose of inspection and investigation for compliance with this chapter.

(c) The department or its representative or designee conducting official duties is not required to notify in advance or seek permission to conduct inspections or investigations.

(1) It is a violation for any person to interfere with, deny, or delay an inspection or investigation conducted by the department or its representative or designee.

(2) The department or its representative or designee shall not be impeded or refused entry in the course of official duties by reason of any regulatory or contractual specification.

§78.110. *Notification of Mold Remediation Activities.*

(a) General provision. A mold remediation contractor or company shall notify the department or the department's representative or designee of a mold remediation, as defined in §78.10(29), when mold contamination affects a total surface area of 25 contiguous square feet or more. The notification shall be:

(1) submitted to the department or its representative or designee no less than five calendar days before the anticipated start date of the mold remediation. The mold remediation contractor or company shall retain a confirmation that the department received the notification;

(2) submitted on a department-approved form in a manner specified by the department. The form must be filled out completely and properly. Blanks that do not apply shall be marked "N/A." The "N/A" designation will not be accepted for identification of the work site, building description, building owner, individuals required to be identified on the notification form, start- and stop-dates, or scheduled hours of mold remediation;

(3) completed to identify the responsible person; and

(4) accompanied by the fee required under §78.80.

(b) Start-date change to later date. When mold remediation activity is rescheduled to start later than the date or hours contained in the most recent notice, the mold remediation contractor or company shall submit a notification to the department in the manner specified by the department as soon as possible but before the start-date on the most recent notice. A written amended notification is required and shall be submitted in the manner specified by the department.

(c) Start-date change to earlier date. When mold remediation activities begin on a date earlier than the date contained in the notice, the mold remediation contractor or company shall submit a notification to the department at least five calendar days before the start-date unless the provisions of subsection (e) apply.

(d) Start-date/stop-date requirement.

(1) In no event shall mold remediation begin or be completed on a date other than the date contained in the written notice except for operations covered under subsection (e).

(2) Amendments to start-dates must be submitted as required in subsections (b) and (c). The cancellation of a mold remediation project shall follow the requirements applicable to a start-date change to a later date.

(3) The mold remediation contractor or company shall submit a notification with schedule changes including work-hour changes to the department no less than one calendar day before the most recent stop-date or the new stop-date, whichever comes first.

(4) An amendment is required for any stop-dates that change by more than one workday.

(e) Provision for emergency. An emergency exists if a delay in mold remediation services in response to a water damage occurrence would increase mold contamination.

(1) In an emergency, the mold remediation contractor or company shall submit a notification to the department as soon as practicable but not later than the following working day after the licensee identifies the emergency.

(2) The requirements of this section are applicable to an emergency with the exception of paragraph (a)(1). The contractor or company shall retain a confirmation that the notification was received by the department.

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

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## CHAPTER 90. OFFENDER EDUCATION PROGRAMS FOR ALCOHOL AND DRUG-RELATED OFFENSES

The Texas Commission of Licensing and Regulation (Commission) adopts new rules at 16 Texas Administrative Code (TAC), Chapter 90, Subchapter A, §90.1; Subchapter B, §§90.20 - 90.24, §90.26, and §90.27; Subchapter C, §§90.30 - 90.34; Subchapter D, §§90.40 - 90.49; Subchapter E, §§90.51 - 90.54; and Subchapter G, §§90.92 - 90.94, regarding the Offender Education Programs for Alcohol and Drug-Related Offenses, without changes to the proposed text as published in the April 21, 2017, issue of the *Texas Register* (42 TexReg 2080). The rules will not be republished.

The Commission also adopts new rules at 16 TAC, Chapter 90, Subchapter A, §90.10; Subchapter B, §90.25; Subchapter E, §90.50; Subchapter F, §90.80; and Subchapter G, §90.91, regarding the Offender Education Programs for Alcohol and Drug-Related Offenses, with changes to the proposed text as published in the April 21, 2017, issue of the *Texas Register* (42 TexReg 2080). The rules will be republished.

The Commission also withdrew proposed new rule at 16 TAC, Chapter 90, Subchapter G, §90.90 as published in the April 21, 2017, issue of the *Texas Register* (42 TexReg 2080).

The Texas Legislature enacted Senate Bill 202 (S.B. 202), 84th Legislature, Regular Session (2015), which, in part, transferred 13 occupational licensing programs in two phases from the Department of State Health Services (DSHS) to the Commission and the Texas Department of Licensing and Regulation (Department). The Commission and Department completed the Phase 1 transition of seven programs on October 3, 2016.

Under Phase 2, the following six programs are being transferred from DSHS to the Commission and the Department: (1) Laser Hair Removal, Texas Health and Safety Code, Chapter 401, §§401.501 - 401.522; (2) Massage Therapy, Texas Occupations Code, Chapter 455; (3) Code Enforcement Officers, Texas Occupations Code, Chapter 1952; (4) Sanitarians, Texas Occupations Code, Chapter 1953; (5) Mold Assessors and Remediators, Texas Occupations Code, Chapter 1958; and (6) Offender Education Programs, Alcoholic Beverage Code, Chapter 106, §106.115 (Alcohol Education Program for Minors); Transportation Code, Chapter 521, §§521.374 - 521.376 (Drug Offender Education Program); Code of Criminal Procedure, Chapter 42A, Articles 42A.403, 42A.405 and 42A.406 (formerly Chapter 42, Article 42.12, §13(h)) (DWI Education Program); and Code of

Criminal Procedure, Chapter 42A, Articles 42A.404, 42A.405, and 42A.406 (formerly Chapter 42, Article 42.12, §13(j)) (DWI Intervention Program). The statutory amendments transferring regulation of these six Phase 2 programs from DSHS to the Commission and the Department will take effect on September 1, 2017.

The new rules were adopted to enable the Commission and the Department to regulate the six Phase 2 programs listed above. The adopted new rules provide for the Department to perform the various functions, including licensing, compliance, and enforcement, necessary to regulate these transferred programs. The effective date of the adopted rules is November 1, 2017. The effective date will coincide with the completion of the transfer of the programs to the Commission and the Department.

The adopted new Subchapter A provides the General Provisions for the proposed new rules. The adopted new §90.1 provides the statutory authority for the Commission and the Department to regulate the Offender Education Programs, which include the Alcohol Education Program for Minors, the Drug Offender Education Program, the DWI Education Program, and the DWI Intervention Program.

The adopted new §90.10 defines the terms used in the Offender Education Programs under this chapter. The Department has made a technical correction to §90.10(16) from the proposed rules.

The adopted new Subchapter B provides the instructor requirements.

The adopted new §90.20 creates the instructor certification requirement.

The adopted new §90.21 details the instructor certification eligibility requirements.

The adopted new §90.22 explains the instructor training course and examination required for the instructor certification.

The adopted new §90.23 details the application process for obtaining an instructor certification.

The adopted new §90.24 establishes the instructor certification term and renewal requirements.

The adopted new §90.25 explains the instructor teaching and continuing education requirements. Based on the public comments and information from DSHS staff, the Department has made changes to this section from the proposed rules.

The adopted new §90.26 details the audit process for instructor continuing education.

The adopted new §90.27 establishes instructor responsibilities.

The adopted new Subchapter C provides the program/provider certification requirements.

The adopted new §90.30 establishes the program/provider certification requirements.

The adopted new §90.31 details the program/provider certification application for headquarter locations.

The adopted new §90.32 details the program/provider certification requirements for branch sites and other locations.

The adopted new §90.33 establishes the program/provider certification term and renewal requirements.

The adopted new §90.34 explains the change of address requirement and the requirement to provide certain information for program/provider certifications.

The adopted new Subchapter D provides the program requirements for curriculum, courses, classrooms, and certificates.

The adopted new §90.40 details the program curriculum and materials for all Offender Education Programs under this chapter.

The adopted new §90.41 addresses the process for the approval of the program curriculum and rules for the DWI Education Program with three other state agencies.

The adopted new §90.42 addresses the process for the adoption of the program rules for the Drug Offender Education Program with another state agency.

The adopted new §90.43 details the general program and course requirements for all Offender Education Programs under this chapter.

The adopted new §90.44 provides additional course requirements for the Drug Offender Education Program.

The adopted new §90.45 provides additional course requirements for the Alcohol Education Program for Minors.

The adopted new §90.46 provides additional course requirements for the DWI Education Program.

The adopted new §90.47 provides additional course requirements for the DWI Intervention Program.

The adopted new §90.48 establishes classroom facilities and equipment requirements.

The adopted new §90.49 creates course completion certificates for participants in Offender Education Programs.

The adopted new Subchapter E provides the program requirements for administration and other responsibilities.

The adopted new §90.50 details the program administration requirements. Based on additional Department research and information from DSHS staff, the Department has made changes to this section from the proposed rules.

The adopted new §90.51 explains the recordkeeping requirements regarding course participants.

The adopted new §90.52 provides for annual reports.

The adopted new §90.53 establishes the confidentiality requirements for the Offender Education Programs.

The adopted new §90.54 prohibits discrimination in the Offender Education Programs.

The adopted new Subchapter F establishes fees for the Offender Education Programs under this chapter.

The adopted new §90.80 details the applicable fees in the Offender Education Programs. Based on the public comments and information from DSHS staff, the Department has made changes to this section from the proposed rules related to the instructor continuing education seminar fee. In addition, based on a Department fee analysis, the Department has made changes to this section to lower two fees.

The adopted new Subchapter G provides enforcement provisions. Based on additional Department research, information from DSHS staff, and changes made to other rule sections, the Department has made changes to the title of Subchapter G.

The adopted new §90.91 requires cooperation with the Department regarding investigation of complaints. Based on additional Department research and information from DSHS staff, the Department has made changes to this section from the proposed rule.

The adopted new §90.92 allows for administrative penalties and sanctions to be imposed.

The adopted new §90.93 specifies the authority to enforce the statutes and this chapter.

The adopted new §90.94 details additional conduct subject to disciplinary action for Offender Education Programs and specified individuals.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the April 21, 2017, issue of the *Texas Register* (42 TexReg 2080). The deadline for public comments was May 22, 2017. The Department held a public hearing during the public comment period on May 12, 2017. During the 30-day public comment period the Department received written comments from ten interested parties. Two of these interested parties also made oral comments at the public hearing. The public comments received are summarized below.

Rule 90.10(13), Definition of Drug Offender.

*Public Comment*--One commenter suggested at the public hearing and in written comments changing the definition of "Drug Offender" under §90.10(13). According to the commenter, at least in Travis County, the majority of the people taking the DWI and the Drug Offender classes are not convicted and may not be convicted. The commenter thought that for the DWI class, the people generally become convicted, but they take the class ahead of the conviction date, and in the drug offender cases, many of these people may get a deferred disposition, or take the class as a condition of disposing of their case. The commenter suggested amending the definition to indicate that a drug offender is a person "who has been charged with a non-alcohol related drug offense class and may be required to take the drug offender education program as a condition for the final disposition of his/her case regardless if they have been convicted or not."

*Department Response*--The Department's proposed definition is the same as the current DSHS definition of "Drug Offender." The Department's proposed definition also reflects the applicable program statute. Transportation Code §521.372, Automatic Suspension; License Denial, states: "(a) A person's driver's license is automatically suspended on final conviction of: (1) an offense under the Controlled Substances Act; (2) a drug offense; or (3) a felony under Chapter 481, Health and Safety Code, that is not a drug offense." Transportation Code §521.374, Educational Program or Equivalent Education, states: "(a) A person whose license is suspended under Section 521.372 may attend an educational program, approved by the Texas Department of Licensing and Regulation under rules adopted by the Texas Commission of Licensing and Regulation and the Texas Department of Public Safety, that is designed to educate persons on the dangers of drug abuse." While judges may order other defendants to attend a Drug Offender Education Program approved by the Department (currently approved by DSHS), the Department's proposed rules conform to the current statute. The Department did not make any changes to the proposed rules based on this public comment.

Rule 90.10(16), Definition of DWI Education Program.

Public Comment--One commenter suggested changing the definition of "DWI Education Program" under §90.10(16). The commenter suggested changing the language from "provided for persons convicted of a DWI offense and placed on community supervision" to "provided for persons convicted or arrested of a DWI offense" and deleting "and placed on community supervision."

*Department Response*--The current DSHS rules use the terminology "convicted" and "placed on community supervision", and the Department continued that terminology in its proposed rules. The Department's proposed definition also reflects the applicable program statute. Code of Criminal Procedure, Chapter 42A, Article 42A.403, Educational Program for Certain Intoxication Offenders; Waiver or Extension of Time, states: "(a) A judge who places on community supervision a defendant convicted of an offense under Sections 49.04-49.08, Penal Code, shall require as a condition of community supervision that the defendant attend and successfully complete, before the 181st day after the date community supervision is granted, an educational program designed to rehabilitate persons who have driven while intoxicated ..." While judges may order other defendants to attend a DWI Education Program approved by the Department (currently approved by DSHS), the Department's proposed rules conform to the current statute. The Department did not make any changes to the proposed rules based on this public comment.

The Department did make a technical correction to this definition to add the words "Code of" before "Criminal Procedure, Chapter 42A ...."

Rule 90.10(17), Definition of DWI Intervention Program.

Public Comment--One commenter suggested at the public hearing and in written comments changing the definition of "DWI Intervention Program" under §90.10(17). The definition states that the intervention program is an educational program, but the commenter stated that it is a counseling and educational program. The commenter stated that the intervention program is not therapy or treatment, but suggested defining the program as an educational and counseling program to differentiate it from the DWI Education Program.

*Department Response*--The current DSHS rules do not include the word "counseling" in the definition, and the Department did not include "counseling" in its proposed rules. The Department's proposed definition also reflects the applicable program statute. Code of Criminal Procedure, Chapter 42A, Article 42A.404, Educational Program for Certain Repeat Intoxication Offenders; Waiver, states: "(a) The judge shall require a defendant who is punished under §49.09, Penal Code, to attend and successfully complete as a condition of community supervision an educational program for repeat offenders that is approved by the Department." According to the statute, the DWI Intervention Program is an education program, not an education and counseling program. The proposed definition of "DWI Intervention Program" is sufficient to distinguish between that program and the DWI Education Program. In addition, to insert the word "counseling" may cause confusion with other licensed professions that do provide counseling services and may cause confusion regarding the scope of practice of offender education program instructors. The Department did not make any changes to the proposed rules based on this public comment.

Rule 90.25, Instructor Teaching and Continuing Education Requirements.

Public Comment--One commenter offered comments at the public hearing and in written comments regarding the instructor continuing education seminar requirements (known as "in-service" under the current DSHS rules). The commenter stated that under the Department proposed rules it appears that an instructor must take a different continuing education seminar (in-service) for each instructor certification (if the instructor is teaching courses for different offender education programs) and that each offender education program has a different continuing education seminar (in-service). The commenter stated that the DSHS in-service is the same for all instructors and all instructors take the same DSHS in-service regardless of which offender education program certification(s) the instructor holds. The commenter stated that an instructor takes one DSHS in-service but it is counted for all offender education program certification(s) the instructor holds.

*Department Response*--The Department proposed rules reflect the current DSHS rules, which state that each offender education program requires a different instructor in-service seminar and that the in-service seminar for one offender education program certification cannot be counted toward a different offender education program certification. Based on information provided by DSHS staff, the current DSHS practice is that one in-service seminar serves as the in-service seminar for each program. The instructor just pays a separate fee for each offender education program that he/she is certified in as an instructor. The same course counts towards multiple certificates as long as the seminar occurs during the current certification period for each certificate and as long as the instructor pays for each certificate. Based on the public comments and the information from DSHS staff, the Department has amended proposed §90.25(a)(4), (b)(4), (c)(4), and (d)(5) to reflect the current DSHS practice. The Department also has amended §90.80, Fees, to reflect the current DSHS practice of charging instructor continuing education seminar fees per certificate per seminar.

Public Comment--One commenter suggested amending §90.25(c) to change the word "teach" to "administer" as it relates to DWI Education Instructors teaching a minimum of four complete DWI Education courses during the instructor certification period.

*Department Response*--Instructors "teach" the courses; they do not "administer" them. Changing the terminology would change the scope of the instructors' duties. It would also create confusion with the role of the "Administrator", who is a certified instructor in good standing and is authorized by the provider to ensure compliance with all aspects of the program. Not all instructors are administrators. This comment is a substantive change to the proposed rules and such a change cannot be made at this point in the rulemaking process, without starting over and republishing the proposed rules. The goal of these proposed rules is to transfer the Offender Education Programs from DSHS to the Department with as little disruption and change as possible.

The comment also would presumably allow for online courses. Historically, the DWI Education Program statute has not been interpreted to allow online courses, and DSHS has not approved any online courses. Legislative efforts this year that would have allowed online courses did not pass. (Senate Bill 333 and House Bill 833, 85th Legislature, Regular Session (2017)). The use of online courses is an issue that the Department can review during the strategic planning process. The Department did not make any changes to the proposed rules based on this public comment.

Rule 90.30, Program/Provider Certification Requirement.

Public Comment--One commenter, during the public hearing and in written comments, suggested adding a provision to §90.30 to require that the certificates of completion that are created for defendants or students be printed and dispatched in the state of Texas, as opposed to companies from out of state coming in, teaching, and mailing the certificates from another state.

*Department Response*--Adding a requirement that the certificates of completion must be printed in and distributed from Texas is a substantive change to the proposed rules and such a change cannot be made at this point in the rulemaking process, without starting over and republishing the proposed rules. The goal of these proposed rules is to transfer the Offender Education Programs from DSHS to the Department with as little disruption and change as possible. In addition, the Department is not aware of any problems with the current system that would require this type of restriction. The Department will comply with state requirements regarding the procurement of services and goods. The Department did not make any changes to the proposed rules based on this public comment.

Public Comment--One commenter during the public hearing suggested adding a new requirement under §90.30 that if an individual or entity is seeking to offer an offender education program, it must be located in Texas and have a physical location in Texas.

*Department Response*--Adding a requirement that an individual or entity offering an education program must be located in Texas and have a physical location in Texas is a substantive change to the proposed rules and such a change cannot be made at this point in the rulemaking process, without starting over and republishing the proposed rules. The goal of these proposed rules is to transfer the Offender Education Programs from DSHS to the Department with as little disruption and change as possible. In addition, this suggestion appears to limit competition from potential out-of-state providers that may offer courses in Texas. There are no restrictions in the current DSHS rules that the individual or entity must be located in Texas. The Department did not make any changes to the proposed rules based on this public comment.

Public Comment--One commenter suggested amending §90.30(c) to change the word "taught" to "administered" as it relates to offender education programs being taught exclusively by instructors certified to instruct the particular type of Offender Education Program.

*Department Response*--Instructors "teach" the classes; they do not "administer" them. Changing the terminology would change the scope of the instructors' duties. It would also create confusion with the role of the "Administrator", who is a certified instructor in good standing and is authorized by the provider to ensure compliance with all aspects of the program. Not all instructors are administrators. This comment is a substantive change to the proposed rules and such a change cannot be made at this point in the rulemaking process, without starting over and republishing the proposed rules. The goal of these proposed rules is to transfer the Offender Education Programs from DSHS to the Department with as little disruption and change as possible.

The comment also would presumably allow for online courses. Historically, the Offender Education Program statutes (with the exception of the Alcoholic Beverage Code) have not been interpreted to allow online courses, and DSHS has not approved any online courses. Legislative efforts this year that would have allowed online courses for two of the Offender Education Pro-

grams did not pass. (Senate Bill 333 and House Bill 833, 85th Legislature, Regular Session (2017)). The use of online courses is an issue that the Department can review during the strategic planning process. The Department did not make any changes to the proposed rules based on this public comment.

Public Comment--One commenter during the public hearing suggested that the Department add a new rule requiring programs/providers to submit a surety bond. The same commenter in written comments suggested that this surety bond requirement be added as a new subsection to §90.30. The commenter stated that the driver education program at the Department requires a bond of \$25,000 for each provider. The commenter stated that each provider that is going to offer offender education should have a minimum bond. The requirement would be on the program provider, not the individual instructors. The commenter suggested that for an initial application, an original bond in the amount of \$25,000 shall be submitted, and for renewals, an original bond or a continuation agreement for the approved bond currently on file shall be submitted.

Seven commenters submitted written public comments opposing the suggestion to require programs/providers to submit surety bonds. Four of these seven commenters stated the bonds are not necessary as Offender Education Program providers have not been determined to have violated Texas law. They stated that requiring surety bonds will increase costs to conduct programs forcing programs to raise tuition. It would present a hardship to the clients and an impediment to providers. The fifth commenter opposed surety bonds for the DWI Education Program and the Drug Offender Education Program, because it would push local vendors out of business, help drive the online programs to meet demands, and would have a tremendous impact on the ability to operate. The sixth commenter opposed surety bonds and stated that if they had to provide surety bonds for each of their programs, they would be forced to shut down their business. The commenter further stated that most providers use pay systems that hold the provider responsible when clients are not happy with the results. The seventh commenter opposed surety bonds and stated that the proposal to require surety bonds is an effort to reduce competition and online opposition.

*Department Response*--Adding a requirement to submit a surety bond is a substantive change to the proposed rules and such a change cannot be made at this point in the rulemaking process, without starting over and republishing the proposed rules. The goal of these proposed rules is to transfer the Offender Education Programs from DSHS to the Department with as little disruption and change as possible.

In addition, this proposed surety bond requirement is not supported by the four Offender Education Program statutes. The Driver Education Safety Program referred to in the public comment is a separate Department program, which has statutory requirements under Education Code Chapter 1001 to require surety bonds from certain individuals and entities. There are no statutory requirements for surety bonds for the four Offender Education Programs transferring from DSHS. The Department did not make any changes to the proposed rules based on this public comment.

Rule 90.31, Program/Provider Certification Application-Headquarters.

Public Comment--One commenter suggested adding a new subsection under §90.31 stating that all certified program/provider headquarters must have a physical location in the state of Texas

where all Offender Education documents and rosters will be kept for audit purposes.

*Department Response*--Adding the suggested requirement that all certified program/provider headquarters have a physical location in Texas is a substantive change to the proposed rules and such a change cannot be made at this point in the rulemaking process, without starting over and republishing the proposed rules. The goal of these proposed rules is to transfer the Offender Education Programs from DSHS to the Department with as little disruption and change as possible. In addition, this suggestion appears to limit competition from potential out-of-state providers that may offer courses in Texas. The Department did not make any changes to the proposed rules based on this public comment.

Rule 90.40, Program Curriculum and Materials--All Programs.

Public Comment--A commenter, during the public hearing and in written comments, offered comments on the use of supplemental media as part of the Offender Education Program curriculum as provided for under §90.40(c). The proposed rule requires that any supplemental media used in an Offender Education Program must have prior written approval from the department and that the class time must be extended by the same amount of time used for the supplemental material. The commenter inquired whether supplementing the curriculum is acceptable as long as all of the existing mandated curriculum is covered in its entirety. The commenter also wanted to know if there could be a qualification that if the supplemental material would exceed more than a certain number of minutes, then additional time would have to be added to the course. The commenter suggested allowing up to 5-15 minutes per 3-4 hour class session without requiring the class time extension. According to the commenter, some classes may not use the full time so there may be time to add supplemental information.

*Department Response*--The Department is committed to updating the curriculum including supporting materials and videos for the Offender Education Programs. The Department will research the appropriate methods for accomplishing this goal. The DWI Education Program and the Drug Offender Education Program also involve other state agencies. As part of the effort to update the curriculum, the Department will consider the issues raised in the public comment regarding the use of supplemental media. The Department did not make any changes to the proposed rules based on this public comment.

Public Comment--One commenter, during the public hearing and in written comments, suggested adding a new rule that requires the state agency to update the course curriculum more often. The commenter stated that the offender education program curriculum and statistics are out of date. Some arrest data statistics are from 2011, and some of the information in the support manual is from 2009. The commenter suggested more regular updating of the curriculum every year or two (written comments) or every 2 or 3 years (public hearing comments) and suggested including a requirement on the State to update the curriculum. The commenter also stated that the videos used as part of the curriculum need to be updated. Some of them are from 1991. The commenter has received comments from people that are attending the classes that the curriculum should be updated.

*Department Response*--The Department is committed to updating the curriculum including supporting materials and videos for the Offender Education Programs. The Department will research the appropriate methods for accomplishing this goal. The DWI

Education Program and the Drug Offender Education Program also involve other state agencies. The Department did not make any changes to the proposed rules based on this public comment.

Public Comment--Another commenter offered comments about the program curriculum being outdated. According to the commenter, in some cases, updates have not been made in 10 years. The commenter recommended that the three state agencies involved convene a task force every two years to review and update the curriculum. The commenter suggested designating a non-profit organization to train instructors about the curriculum changes. The commenter also expressed concerns about the outdated information provided in the Drug Offender Education Program related to HIV, HCV, AIDS, and STDs. The education should include information on the effectiveness of the newest medications and preventative medications.

*Department Response*--The Department is committed to updating the curriculum for the Offender Education Programs. The Department will research the appropriate methods for accomplishing this goal. The DWI Education Program and the Drug Offender Education Program also involve other state agencies. The Department did not make any changes to the proposed rules based on this public comment.

Rule 90.43, General Program and Course Requirements--All Programs.

Public Comment--One commenter suggested an amendment to §90.43(b) to change the word "taught" to "administered" as it relates to courses being taught by instructors certified to instruct the applicable type of Offender Education Program. The commenter also suggested deleting the requirement that instructors must be physically present in the classroom with all other participants for each class and deleting the requirement that a single instructor must teach the entire course for all offender education programs with the exception of the DWI Intervention Program which may allow two certified instructors.

*Department Response*--Instructors "teach" the classes; they do not "administer" them. Changing the terminology would change the scope of the instructors' duties. It would also create confusion with the role of the "Administrator", who is a certified instructor in good standing and is authorized by the provider to ensure compliance with all aspects of the program. Not all instructors are administrators. In addition, under the current DSHS rules, instructors must be physically present in the classroom with the participants and a single instructor must teach the entire course, with the exception of the DWI Intervention Program that allows for two instructors. The comment suggests substantive changes to the proposed rules and such changes cannot be made at this point in the rulemaking process, without starting over and republishing the proposed rules. The goal of these proposed rules is to transfer the Offender Education Programs from DSHS to the Department with as little disruption and change as possible.

The comment also would presumably allow for online courses. Historically, the Offender Education Program statutes (with the exception of the Alcoholic Beverage Code) have not been interpreted to allow online courses, and DSHS has not approved any online courses. Legislative efforts this year that would have allowed online courses for two of the Offender Education Programs did not pass. (Senate Bill 333 and House Bill 833, 85th Legislature, Regular Session (2017)). The use of online courses is an issue that the Department can review during the strategic



planning process. The Department did not make any changes to the proposed rules based on this public comment.

*Public Comment*--One commenter suggested amendments to §90.43(j) to change the word "conduct" to "administer" and "exit interview" to "exit evaluation" as it relates to course instructors for all offender education program conducting exit interviews with each participant as outlined in the applicable education program manual. The commenter also suggested deleting the language that the exit interview be conducted "as outlined in the applicable education program manual."

*Department Response*--Instructors "conduct" exit interviews; they do not "administer" exit evaluations. Changing the terminology would change the scope of the instructors' duties. It would also create confusion with the role of the "Administrator", who is a certified instructor in good standing and is authorized by the provider to ensure compliance with all aspects of the program. Not all instructors are administrators. The proposed change also suggests a less formal and less uniform method of conducting the exit interviews. Under the current DSHS rules, these interviews must be conducted uniformly as prescribed in the applicable education program manual. These suggestions are substantive changes to the proposed rules and such changes cannot be made at this point in the rulemaking process, without starting over and republishing the proposed rules. The goal of these proposed rules is to transfer the Offender Education Programs from DSHS to the Department with as little disruption and change as possible. The Department did not make any changes to the proposed rules based on this public comment.

Rule 90.80, Fees.

*Public Comment*--As explained under §90.25, one commenter offered comments at the public hearing and in written comments regarding the continuing education seminar requirements (known as "in-service" under the current DSHS rules). The commenter stated that the DSHS in-service is the same for all instructors and all instructors take the same DSHS in-service regardless of which offender education program certification(s) the instructor holds. The commenter stated that an instructor takes one DSHS in-service but it is counted for all offender education programs.

*Department Response*--As explained under §90.25, the Department proposed rules reflect the current DSHS rules. Based on the public comments and the information from DSHS staff, the Department has amended §90.80, Fees, subsection (b)(6) to reflect the current DSHS practice of charging instructor continuing education seminar fees per certificate per seminar. As explained under §90.25, the Department also amended proposed rules §90.25(a)(4), (b)(4), (c)(4), and (d)(5) to reflect the current DSHS practice. The Department also made additional changes to the fees section as explained below under "Other Changes Made by the Department."

Public Comments Proposing to Add New Rules

*Public Comment*--A commenter suggested that the Department add a new "Alternative Delivery Method to the DWI Education Program." The commenter stated that the DWI Offender Education Program is mandated by statute, but it can be waived if the defendant does not have access to the course or can show cause to not attend. According to the commenter, by offering an Alternative Delivery Method to the DWI Education Program, the defendant will no longer be able to avoid this portion of the punishment. The commenter provided suggested language for

new rules to allow for an Alternative Delivery Method to the DWI Education Program.

*Department Response*--Adding a new Alternative Delivery Method to the DWI Education Program is a substantive change in the proposed rules and such a change cannot be made at this point in the rulemaking process, without starting over and republishing the proposed rules. The goal of these proposed rules is to transfer the Offender Education Programs from DSHS to the Department with as little disruption and change as possible.

The comment also would presumably allow for online courses. Historically, the DWI Education Program statute has not been interpreted to allow online courses, and DSHS has not approved any online courses. Legislative efforts this year that would have allowed online courses did not pass. (Senate Bill 333 and House Bill 833, 85th Legislature, Regular Session (2017)). The use of online courses is an issue that the Department can review during the strategic planning process. The Department did not make any changes to the proposed rules based on this public comment.

Other Changes Made by the Department

The Department also made technical and other changes to the proposed rules based on additional Department research and review, information from DSHS staff, and a Department fee analysis.

Title of the Rule Chapter.

The Department made a technical change to the title of the proposed rule chapter from "Offender Education Programs" to "Offender Education Programs Related to Alcohol and Drug-Related Offenses." This change was made to distinguish these programs from a new program that was assigned to the Department by H.B. 162, 85th Legislature, Regular Session (2017), which creates an online offender education program for animal cruelty convictions.

Rule 90.50, Program Administration.

Based on additional Department research and information from DSHS staff, the Department has changed and narrowed the scope of §90.50(d), Program Records and Audits, as proposed. The Department has removed subsection (d)(2) regarding the onsite visits for auditing and monitoring purposes. The Department has clarified subsection (d)(3), regarding submitting documents to the Department upon request, and has renumbered the subsection as new (d)(2). The Department has removed subsection (d)(4), regarding interviewing the Program/Provider, its Administrator, its personnel, its Instructors, and its participants.

The Department has changed §90.50(h), Complaints, to remove subsection (h)(3). This provision is duplicative with §90.91 as proposed (now §90.91(a) as changed). The Department also has changed the title of the subsection to clarify the scope of the subsection and to distinguish this subsection from §90.91. The new subsection title is "Complaint Procedures and Notice."

Rule 90.80, Fees.

During the rulemaking process, the Department conducted a fee analysis for the Offender Education Programs. As a result of that analysis, the Department has made additional changes to §90.80 as proposed. Section 51.202 of the Texas Occupations Code, requires the Commission to set fees in amounts reasonable and necessary to cover the costs of administering the programs under the Department's jurisdiction. Additionally, Article

VIII, Section 2 of the General Appropriations Act requires the Department's revenue cover the cost of the Department's appropriations and other direct and indirect costs. The Department found that the fees in the proposed rules are above the amounts that will be required for the Department to cover its costs. Therefore, the Department has reduced the following fees: (1) the Program/Provider certification renewal fee is reduced from \$225 per program to \$200 per program; and (2) the fee for moving headquarters to a location outside of the county is reduced from \$300 to \$25. The decrease in these two fees will not adversely affect the administration and enforcement of the program. The reduction in these two fees will result in approximately \$5,250 of lost revenue to the state each year.

#### Title of Subchapter G

Based on additional Department research, information from DSHS staff, and changes made to other rule sections, the Department has made changes to the title of Subchapter G, as proposed, to clarify the scope of the subchapter. The new subchapter title is "Enforcement."

#### Rule 90.90, Monitoring and Audits of Programs.

Based on additional Department research and information from DSHS staff, the Department has withdrawn §90.90 as proposed. Section 90.90 as proposed was similar to §90.50(d) as proposed. The Department has narrowed the scope of §90.50(d) and withdrawn §90.90.

#### Rule 90.91, Complaints.

The Department has made changes to §90.91 as proposed to add new subsection (b). This new subsection was copied from §90.50(d)(3) as proposed and narrowed in scope to apply to investigations of complaints. The Department also has changed the title of the section to clarify the scope of the section and to distinguish this section from §90.50(h). The new section title is "Complaints; Investigations."

## SUBCHAPTER A. GENERAL PROVISIONS

### 16 TAC §90.1, §90.10

The new rules are adopted under Texas Occupations Code, Chapter 51; Alcoholic Beverage Code, Chapter 106, §106.115 (Alcohol Education Program for Minors); Transportation Code, Chapter 521, §§521.374 - 521.376 (Drug Offender Education Program); Code of Criminal Procedure, Chapter 42A, Articles 42A.403, 42A.405 and 42A.406 (formerly Chapter 42, Article 42.12, §13(h)) (DWI Education Program); and Code of Criminal Procedure, Chapter 42A, Articles 42A.404, 42A.405, and 42A.406 (formerly Chapter 42, Article 42.12, §13(j)) (DWI Intervention Program), which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51; Alcoholic Beverage Code, Chapter 106; Transportation Code, Chapter 521; Code of Criminal Procedure, Chapter 42A; and Penal Code, Chapter 49. No other statutes, articles, or codes are affected by the adoption.

#### §90.10. Definitions.

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

(1) Administrator--An individual who is a certified Instructor in good standing and who is authorized to act on behalf of the certified Provider in all respects relating to compliance with this chapter.

(2) Alcohol Education Program for Minors--An educational program provided to minors pursuant to Alcoholic Beverage Code §106.115 that is designed to:

(A) present information to participants on the effects of alcohol upon behavior and upon the lives of persons who use alcohol;

(B) help participants identify their own drinking patterns or problems;

(C) educate participants about the laws relating to possession, consumption, and purchase of alcoholic beverages and laws relating to minors under the influence of alcohol; and

(D) assist participants in developing a plan to reduce the probability of involvement in future alcohol-related illegal behavior or detrimental activity.

(3) Annual Reporting Period--The period of time beginning September 1 of each year and ending August 31 of the following year.

(4) Branch Office/Site--An additional Offender Education Program/Provider site that is located in the same or adjacent county as the headquarters of a certified Offender Education Provider.

(5) Certificates of Course Completion--Uniform, serially numbered certificates of completion required and designated by the department to be used by certified Providers for dissemination to Participants upon successful completion of an Offender Education Program.

(6) Commission--The Texas Commission of Licensing and Regulation.

(7) Continuing Education Hour--At least 50 minutes of participation in an organized, systematic learning experience which deals with and is designed for the acquisition of knowledge, skills, and information on drug or alcohol-related topics, as applicable to the particular Instructor certification.

(8) Continuing Education Seminar--A department-sponsored continuing education seminar, class or course for an applicable Offender Education Instructor certification.

(9) Course Records--Offender Education participants' personal data forms, pre- and post-tests, self-assessments, screening instrument(s), homework assignments, action plans, and any other written material required or used in the offender education class instruction.

(10) Course Roster--A form used to record data on all offender education participants enrolled in the course and to record attendance data on those participants at each class throughout the course.

(11) Course Size--The number of Offender Education participants in a course, to be calculated according to the number of participants officially enrolled in the course or the greatest number of participants in attendance in any class within a course, whichever is greater.

(12) Department--The Texas Department of Licensing and Regulation.

(13) Drug Offender--A person whose license is suspended under Transportation Code §521.372 (relating to Automatic Suspension; License Denial) and any amendments thereto, for final conviction of an offense described in that section.

(14) Drug Offender Education Program--An educational program provided to Drug Offenders pursuant to Transportation Code §521.374 that is designed to:

(A) educate participants on the dangers of drug use/abuse and associated illegal activities;

(B) provide information on the effects of drug use/abuse and related illegal activities on personal, family, social, economic and community life;

(C) assist participants in evaluating their own abusive patterns connected with their use of drugs or associated illegal activities; and

(D) assist participants in developing a plan for positive lifestyle changes to reduce chances of being involved in future drug use/abuse and related illegal behaviors.

(15) DWI--An offense relating to driving or operating a motorized vehicle while intoxicated, as described in Penal Code §§49.04 - 49.08, relating to Intoxication Offenses.

(16) DWI Education Program--An educational program provided to persons convicted of a DWI offense and placed on community supervision pursuant to Code of Criminal Procedure, Chapter 42A, Articles 42A.403, 42A.405, and 42A.406 (formerly Chapter 42, Article 42.12, §13(h)) that is designed to:

(A) present information on the effects of alcohol and other drugs on driving skills;

(B) help participants identify their own individual drinking or drugged driving patterns; and

(C) assist participants in developing a plan to reduce the probability that they will be involved in future DWI behavior.

(17) DWI Intervention Program--An educational program provided to persons punished under Penal Code §49.09, relating to Enhanced Offenses and Penalties, pursuant to Code of Criminal Procedure, Chapter 42A, Articles 42A.404, 42A.405, and 42A.406 (formerly Chapter 42, Article 42.12, §13(j)) that is designed to:

(A) educate participants about chemical dependency and the problems associated with chemical dependency;

(B) provide intensive instruction about specific actions participants can take to prevent future DWI offenses; and

(C) instruct participants about methods and ways to make necessary lifestyle changes in order to prevent alcohol/drug-related problems in other areas of the participants' lives.

(18) Executive Director--The executive director of the department.

(19) Instructor Applicant--A term describing an individual from the period when the individual submits an application for admission into an Instructor training course until the point where certification is granted or denied.

(20) Instructor Certification Period--The period of time beginning with the date Instructor certification was granted to instruct an applicable Offender Education curriculum, and ending two years after the date the certification was issued.

(21) Instructor Training Class--A session of an Instructor training course.

(22) Instructor Training Course--The complete series of Instructor training class sessions.

(23) Minor--A person under the age of 21 years.

(24) Offender Education Class--A session of an Offender Education course.

(25) Offender Education Course--The complete series of Offender Education class sessions.

(26) Offender Education Program (Program)--An Alcohol Education Program for Minors, Drug Offender Education Program, DWI Education Program, or DWI Intervention Program.

(27) Offender Education Provider (Provider)--An individual or entity holding certification of approval from the department to offer or provide the Alcohol Education Program for Minors, Drug Offender Education Program, DWI Education Program, or DWI Intervention Program.

(28) Participant--An individual who attends a department-approved Offender Education Program.

(29) Program/Provider Headquarters--The primary administrative center of a certified Offender Education Provider that is identified as the business address in the Provider's application.

(30) Screening Instrument--A written device approved by the department and required to be administered to each Program participant for the purpose of:

(A) identifying indicators of a potential substance abuse problem; and

(B) making recommendations for further evaluation, where indicated by the screening instrument.

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

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## SUBCHAPTER B. INSTRUCTOR REQUIREMENTS

### 16 TAC §§90.20 - 90.27

The new rules are adopted under Texas Occupations Code, Chapter 51; Alcoholic Beverage Code, Chapter 106, §106.115 (Alcohol Education Program for Minors); Transportation Code, Chapter 521, §§521.374 - 521.376 (Drug Offender Education Program); Code of Criminal Procedure, Chapter 42A, Articles 42A.403, 42A.405 and 42A.406 (formerly Chapter 42, Article 42.12, §13(h)) (DWI Education Program); and Code of Criminal Procedure, Chapter 42A, Articles 42A.404, 42A.405, and 42A.406 (formerly Chapter 42, Article 42.12, §13(j)) (DWI Intervention Program), which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51; Alcoholic Beverage Code, Chapter 106; Transportation Code, Chapter 521; Code of Criminal Procedure, Chapter 42A; and Penal Code,

Chapter 49. No other statutes, articles, or codes are affected by the adoption.

§90.25. *Instructor Teaching and Continuing Education Requirements.*

(a) Drug Offender Education Instructor Requirements.

(1) Each Drug Offender Education Instructor must teach a minimum of four complete Drug Offender Education courses and attend at least one department-sponsored Drug Offender Education Instructor continuing education seminar during the Instructor's certification period, and each subsequent Instructor certification period.

(2) If substantial intervening changes are made to the Drug Offender Education curriculum, or significant updates are required to curriculum material, Instructors for Drug Offender Education shall attend any additional department-sponsored Drug Offender Education Instructor continuing education seminar or special meeting regarding which the department sends them notice.

(3) Instructors who are licensed chemical dependency counselors, licensed professional counselors, licensed psychologists, licensed psychiatrists, or licensed social workers may complete 20 hours of continuing education that is directly drug-related, in lieu of attending the department-sponsored continuing education seminar. If selected for a continuing education audit under §90.26, proof of these continuing education hours must be submitted to the department in a manner prescribed by the department.

(4) Continuing education hours obtained in a department-sponsored Drug Offender Education Instructor continuing education seminar may be used to fulfill the continuing education requirement of another Offender Education certification as long as the seminar occurs during the current certification period and as long as the instructor pays for each certification.

(b) Alcohol Education Program for Minors Instructor Requirements.

(1) Each Alcohol Education Program for Minors Instructor shall teach a minimum of four complete Alcohol Education Program for Minors courses and attend at least one department-sponsored Alcohol Education Program for Minors Instructor continuing education seminar during the Instructor's certification period, and each subsequent Instructor certification period.

(2) If substantial intervening changes are made to the Alcohol Education Program for Minors curriculum, or significant updates are required to curriculum material, Instructors for Alcohol Education Program for Minors shall attend any additional department-sponsored Alcohol Education Program for Minors Instructor continuing education seminar or special meeting regarding which the department sends them notice.

(3) Instructors who are licensed chemical dependency counselors, licensed professional counselors, licensed psychologists, licensed psychiatrists, or licensed social workers may complete 20 hours of continuing education that is directly alcohol-related, in lieu of attending the department-sponsored continuing education seminar. If selected for a continuing education audit under §90.26, proof of these continuing education hours must be submitted to the department in a manner prescribed by the department.

(4) Continuing education hours obtained in a department-sponsored Alcohol Education Program for Minors Instructor continuing education seminar may be used to fulfill the continuing education requirement of another Offender Education certification as long as the seminar occurs during the current certification period and as long as the instructor pays for each certification.

(c) DWI Education Instructor Requirements.

(1) Each DWI Education Instructor shall teach a minimum of four complete DWI Education courses and attend at least one department-sponsored DWI Education Instructor continuing education seminar during the DWI Education Instructor's certification period, and each subsequent Instructor certification period.

(2) If substantial intervening changes are made to the DWI Education curriculum, or significant updates are required to curriculum material, Instructors for DWI Education shall attend any additional department-sponsored DWI Education Instructor continuing education seminar or special meeting regarding which the department sends them notice.

(3) Instructors who are licensed chemical dependency counselors, licensed professional counselors, licensed psychologists, licensed psychiatrists, or licensed social workers may complete 20 hours of continuing education that is directly alcohol-related, in lieu of attending the department-sponsored continuing education seminar. If selected for a continuing education audit under §90.26, proof of these continuing education hours must be submitted to the department in a manner prescribed by the department.

(4) Continuing education hours obtained in a department-sponsored DWI Education Instructor continuing education seminar may be used to fulfill the continuing education requirement of another Offender Education certification as long as the seminar occurs during the current certification period and as long as the instructor pays for each certification.

(d) DWI Intervention Instructor Requirements.

(1) Each DWI Intervention Instructor shall teach a minimum of two complete DWI Intervention courses and attend at least one department-sponsored DWI Intervention Instructor continuing education seminar during the Instructor's certification period, and each subsequent Instructor certification period.

(2) If substantial intervening changes are made to the DWI Intervention curriculum, or significant updates are required to curriculum material, Instructors for DWI Intervention shall attend any additional department-sponsored DWI Intervention Instructor continuing education seminar or special meeting regarding which the department sends them notice.

(3) Instructors who are licensed chemical dependency counselors, licensed professional counselors, licensed psychologists, licensed psychiatrists, or licensed social workers may complete 20 hours of continuing education that is directly alcohol-related, in lieu of attending the department-sponsored continuing education seminar. If selected for a continuing education audit under §90.26, proof of these continuing education hours must be submitted to the department in a manner prescribed by the department.

(4) Team teaching, with no more than two certified instructors, may be counted towards the fulfillment of the teaching requirement.

(5) Continuing education hours obtained in a department-sponsored DWI Intervention Instructor continuing education seminar may be used to fulfill the continuing education requirement of another Offender Education certification as long as the seminar occurs during the current certification period and as long as the instructor pays for each certification.

(e) An Instructor must pay a continuing education seminar fee for each Instructor certification to the department's third party contractor.

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

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## SUBCHAPTER C. PROGRAM/PROVIDER CERTIFICATION REQUIREMENTS

### 16 TAC §§90.30 - 90.34

The new rules are adopted under Texas Occupations Code, Chapter 51; Alcoholic Beverage Code, Chapter 106, §106.115 (Alcohol Education Program for Minors); Transportation Code, Chapter 521, §§521.374 - 521.376 (Drug Offender Education Program); Code of Criminal Procedure, Chapter 42A, Articles 42A.403, 42A.405 and 42A.406 (formerly Chapter 42, Article 42.12, §13(h)) (DWI Education Program); and Code of Criminal Procedure, Chapter 42A, Articles 42A.404, 42A.405, and 42A.406 (formerly Chapter 42, Article 42.12, §13(j)) (DWI Intervention Program), which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51; Alcoholic Beverage Code, Chapter 106; Transportation Code, Chapter 521; Code of Criminal Procedure, Chapter 42A; and Penal Code, Chapter 49. No other statutes, articles, or codes are affected by the adoption.

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

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## SUBCHAPTER D. PROGRAM REQUIRE- MENTS - CURRICULUM, COURSES, CLASSROOMS, CERTIFICATES

### 16 TAC §§90.40 - 90.49

The new rules are adopted under Texas Occupations Code, Chapter 51; Alcoholic Beverage Code, Chapter 106, §106.115

(Alcohol Education Program for Minors); Transportation Code, Chapter 521, §§521.374 - 521.376 (Drug Offender Education Program); Code of Criminal Procedure, Chapter 42A, Articles 42A.403, 42A.405 and 42A.406 (formerly Chapter 42, Article 42.12, §13(h)) (DWI Education Program); and Code of Criminal Procedure, Chapter 42A, Articles 42A.404, 42A.405, and 42A.406 (formerly Chapter 42, Article 42.12, §13(j)) (DWI Intervention Program), which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51; Alcoholic Beverage Code, Chapter 106; Transportation Code, Chapter 521; Code of Criminal Procedure, Chapter 42A; and Penal Code, Chapter 49. No other statutes, articles, or codes are affected by the adoption.

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## SUBCHAPTER E. PROGRAM REQUIRE- MENTS - ADMINISTRATION AND OTHER RESPONSIBILITIES

### 16 TAC §§90.50 - 90.54

The new rules are adopted under Texas Occupations Code, Chapter 51; Alcoholic Beverage Code, Chapter 106, §106.115 (Alcohol Education Program for Minors); Transportation Code, Chapter 521, §§521.374 - 521.376 (Drug Offender Education Program); Code of Criminal Procedure, Chapter 42A, Articles 42A.403, 42A.405 and 42A.406 (formerly Chapter 42, Article 42.12, §13(h)) (DWI Education Program); and Code of Criminal Procedure, Chapter 42A, Articles 42A.404, 42A.405, and 42A.406 (formerly Chapter 42, Article 42.12, §13(j)) (DWI Intervention Program), which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51; Alcoholic Beverage Code, Chapter 106; Transportation Code, Chapter 521; Code of Criminal Procedure, Chapter 42A; and Penal Code, Chapter 49. No other statutes, articles, or codes are affected by the adoption.

§90.50. *Program Administration.*

(a) Compliance. An Offender Education Program/Provider is responsible for all aspects of Program compliance with this chapter, including any noncompliance related to the conduct of a Program Instructor, Administrator, owner, or other personnel.

(b) Program Administrator.

(1) Each Offender Education Program/Provider must designate an Administrator who must ensure the Program's/Provider's compliance with the administrative requirements of this section and the proper operation of the Program in compliance with all requirements of this chapter.

(2) Nothing in this subsection shall limit the concurrent responsibility of an Administrator or Instructor for that individual's own conduct.

(3) An Administrator must be in good standing as a certified Instructor for the applicable program and must meet all of the requirements of program Instructors.

(4) An Offender Education Program that does not have a currently certified Administrator on record with the department will not be authorized to offer the applicable Offender Education course until the Offender Education Program designates a new, currently certified Administrator and provides written notice to the department of the designation.

(c) Course Fees and Schedules.

(1) An Offender Education Program/Provider must set definite and reasonable course fees. Course fees may not be assessed on a class-by-class basis.

(2) An Offender Education Program must maintain, and make available upon request, written course schedules that include the dates, times, and locations where courses will be held, and the fees charged by the Program.

(3) An Offender Education Program must schedule at least one course each quarter.

(d) Program Records and Audits.

(1) An Offender Education Program/Provider, and its Administrator and Instructors, must maintain, for at least three years, documentation necessary to demonstrate compliance with all applicable requirements of this chapter. This requirement applies to records and documentation created on or after the effective date of this subsection.

(2) Upon request, the Program/Provider, its Administrator, and Instructors must make available or provide to the department at any reasonable time, any of its documents or records, including all records of any Instructor or Administrator, unless otherwise prohibited by law.

(e) Change in Program Information. An Offender Education Program/Provider must notify the department in writing within 30 days of any change in the Provider's headquarters or branch site address(es), telephone number, e-mail address, website address, or change in the Administrator or Instructor(s).

(f) Providing Information to Course Participants. The Offender Education Program/Provider must provide to each course participant:

- (1) the Program/Provider certification number;
- (2) the Instructor certification number; and
- (3) information regarding how to file a complaint with the department.

(g) Referrals.

(1) If an Offender Education Program or Instructor is in a position to or does provide Offender Education referral information to an individual who is required to attend an Offender Education course,

the Offender Education Program or Instructor providing the referral information:

(A) must provide the department's phone number and web address;

(B) must advise the individual concerning the individual's choice to attend any Offender Education Program certified by the department; and

(C) may not require or otherwise attempt to influence an individual to choose a particular Offender Education Program.

(2) This subsection does not prevent a Program or Instructor from providing information specific to the Program or to the Instructor's own Program or course when a prospective participant is specifically requesting information about that particular Program or the Instructor's own Program or course.

(h) Complaint Procedures and Notice.

(1) An Offender Education Program/Provider must establish procedures to resolve participant complaints.

(2) An Offender Education Program/Provider, Administrator, and course Instructor must provide participants with a notice or documentation that contains the name, current mailing address, current telephone number, and website address of the department and a statement that any complaints against the Program or any of its personnel may be directed to the department.

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

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## SUBCHAPTER F. FEES

### 16 TAC §90.80

The new rules are adopted under Texas Occupations Code, Chapter 51; Alcoholic Beverage Code, Chapter 106, §106.115 (Alcohol Education Program for Minors); Transportation Code, Chapter 521, §§521.374 - 521.376 (Drug Offender Education Program); Code of Criminal Procedure, Chapter 42A, Articles 42A.403, 42A.405 and 42A.406 (formerly Chapter 42, Article 42.12, §13(h)) (DWI Education Program); and Code of Criminal Procedure, Chapter 42A, Articles 42A.404, 42A.405, and 42A.406 (formerly Chapter 42, Article 42.12, §13(j)) (DWI Intervention Program), which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51; Alcoholic Beverage Code, Chapter 106; Transportation Code, Chapter 521; Code of Criminal Procedure, Chapter 42A; and Penal Code,

Chapter 49. No other statutes, articles, or codes are affected by the adoption.

§90.80. Fees.

(a) All fees paid to the department and any charges for program-related materials are non-refundable.

(b) Fees will be assessed in accordance with the following fee schedule:

(1) Offender Education Program/Provider Certification Fees (paid to department):

(A) Initial application fee, including a new Program in a non-adjacent county to the headquarters--\$300 per Program;

(B) Renewal application fee--\$200 per Program;

(2) Branch Site Fees (paid to department):

(A) Initial application fee for a branch site (same or adjacent county to the headquarters)--\$5 per branch site;

(B) Branch site renewal application fee--\$5 per branch site;

(3) Moving/Change of Headquarters Fees (paid to department):

(A) Moving headquarters to a location outside of the county--\$25;

(B) Moving headquarters to a location in the same county--\$25;

(4) Instructor Certification Fees:

(A) initial application fee--\$0;

(B) renewal application fee--\$0;

(5) Instructor Training Course Fees (paid to third party contractor)--\$425 per course;

(6) Continuing Education Seminar Fees (paid to third party contractor)--\$100 per certification per seminar; and

(7) Fees for Program Course Materials must be paid to the third party contractor.

(c) A duplicate/replacement fee for a certification/certificate issued under this chapter is \$25.

(d) A dishonored/returned check or payment fee is the fee prescribed under §60.82 of this title (relating to Dishonored Payment Device).

(e) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).

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SUBCHAPTER G. ENFORCEMENT

16 TAC §§90.91 - 90.94

The new rules are adopted under Texas Occupations Code, Chapter 51; Alcoholic Beverage Code, Chapter 106, §106.115 (Alcohol Education Program for Minors); Transportation Code, Chapter 521, §§521.374 - 521.376 (Drug Offender Education Program); Code of Criminal Procedure, Chapter 42A, Articles 42A.403, 42A.405 and 42A.406 (formerly Chapter 42, Article 42.12, §13(h)) (DWI Education Program); and Code of Criminal Procedure, Chapter 42A, Articles 42A.404, 42A.405, and 42A.406 (formerly Chapter 42, Article 42.12, §13(j)) (DWI Intervention Program), which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51; Alcoholic Beverage Code, Chapter 106; Transportation Code, Chapter 521; Code of Criminal Procedure, Chapter 42A; and Penal Code, Chapter 49. No other statutes, articles, or codes are affected by the adoption.

§90.91. Complaints; Investigations.

(a) Upon verbal or written request from the department, an Offender Education Program, Administrator, Instructor, or any person associated with the Program, must cooperate with the department and furnish requested information concerning any department investigation of a complaint.

(b) If the department is investigating a complaint, the Program/Provider, its Administrator, and Instructors must make available or provide to the department upon request at any reasonable time, any of its documents or records, including all records of any Instructor or Administrator, unless otherwise prohibited by law.

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

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CHAPTER 119. SANITARIANS

The Texas Commission of Licensing and Regulation (Commission) adopts new rules at 16 Texas Administrative Code (TAC), Chapter 119, §§119.1, 119.3, 119.11, 119.12, 119.20, 119.90 and 119.95, regarding the Sanitarians program, without changes to the proposed text as published in the April 21, 2017, issue of the *Texas Register* (42 TexReg 2123). The rules will not be republished.

The Commission also adopts new rules at 16 TAC, Chapter 119, §§119.2, 119.10, 119.11, 119.13 - 119.15, 119.21, 119.23, 119.24, 119.26, 119.27, 119.70 and 119.80, regarding the Sani-

sanitarians program, with changes to the proposed text as published in the April 21, 2017, issue of the *Texas Register* (42 TexReg 2123). The rules will be republished.

The Texas Legislature enacted Senate Bill 202 (S.B. 202), 84th Legislature, Regular Session (2015), which, in part, transferred 13 occupational licensing programs in two phases from the Department of State Health Services (DSHS) to the Commission and the Texas Department of Licensing and Regulation (Department). The Commission and Department completed the Phase 1 transition of seven programs on October 3, 2016.

Under Phase 2, the following six programs are being transferred from DSHS to the Commission and the Department: (1) Laser Hair Removal, Texas Health and Safety Code, Chapter 401, §§401.501 - 401.522; (2) Massage Therapy, Texas Occupations Code, Chapter 455; (3) Code Enforcement Officers, Texas Occupations Code, Chapter 1952; (4) Sanitarians, Texas Occupations Code, Chapter 1953; (5) Mold Assessors and Remediators, Texas Occupations Code, Chapter 1958; and (6) Offender Education Programs, Alcoholic Beverage Code, Chapter 106, §106.115 (Alcohol Education Program for Minors); Transportation Code, Chapter 521, §§521.374 - 521.376 (Drug Offender Education Program); Code of Criminal Procedure, Chapter 42A, Articles 42A.403, 42A.405 and 42A.406 (formerly Chapter 42, Article 42.12, §13(h)) (DWI Education Program); and Code of Criminal Procedure, Chapter 42A, Articles 42A.404, 42A.405, and 42A.406 (formerly Chapter 42, Article 42.12, §13(j)) (DWI Intervention Program). The statutory amendments transferring regulation of these six Phase 2 programs from DSHS to the Commission and the Department will take effect on September 1, 2017.

The new rules were adopted to enable the Commission and the Department to regulate the six Phase 2 programs listed above. The adopted new rules provide for the Department to perform the various functions, including licensing, compliance, and enforcement, necessary to regulate these transferred programs. The effective date of adopted §§119.1, 119.2 and 119.10 - 119.15 is September 15, 2017, to allow the Department to establish an advisory board. The effective date of the remaining adopted rule sections is November 1, 2017. The effective date will coincide with the completion of the transfer of the programs to the Commission and the Department.

The adopted new §119.1 provides the statutory authority for the Commission and the Department to regulate sanitarians.

The adopted new §119.2 creates the definitions to be used in the sanitarians program.

The adopted new §119.3 establishes the scope of practice for sanitarians.

The adopted new §119.10 creates an advisory committee and describes its composition.

The adopted new §119.11 establishes the advisory committee officers.

The adopted new §119.12 provides for the duties of the advisory committee.

The adopted new §119.13 details the terms and vacancies for the committee.

The adopted new §119.14 explains when the advisory committee shall meet.

The adopted new §119.15 details the reimbursement guidelines for the advisory committee.

The adopted new §119.20 establishes general eligibility requirements for applicants seeking registration.

The adopted new §119.21 details the registration requirements for the sanitarian program.

The adopted new §119.23 explains the educational requirements necessary to obtain registration.

The adopted new §119.24 establishes the examination requirement.

The adopted new §119.26 creates the registration renewal requirements.

The adopted new §119.27 establishes the continuing education requirements.

The adopted new §119.70 establishes standards of conduct for the sanitarians program.

The adopted new §119.80 establishes fees for the sanitarians program.

The adopted new §119.90 allows for administrative penalties and sanctions.

The adopted new §119.95 provides the authority to enforce Texas Occupations Code, Chapter 1953 and this chapter.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the April 21, 2017, issue of the *Texas Register* (42 TexReg 2123). The deadline for public comments was May 22, 2017. The Department held a public hearing during the public comment period on May 11, 2017. During the 30-day public comment period the Department received comments from three interested parties. The public comments received are summarized below.

**Comment--**One commenter suggested requiring new registrants to obtain certification from the National Environmental Health Association as a Registered Environmental Health Specialist / Registered Sanitarian.

**Department Response--**A statutory change would be required in order for the department to implement such a requirement. The Department did not make any changes to the proposed rules based on this comment.

**Comment--**The commenter suggested reducing the minimum numbers of semester hours in basic or applied science to either 16 or 24 hours.

**Department Response--**A statutory change would be required in order for the department to reduce the number of required semester hours. The Department did not make any changes to the proposed rules based on this comment.

**Comment--**The commented suggested that all inspections performed throughout the state should be required to be performed by a registered sanitarian, sanitarian in training, or a person certified as a Registered Environmental Health Specialist / Registered Sanitarian.

**Department Response--**A statutory change would be required in order for the department to implement such a requirement. The Department did not make any changes to the proposed rules based on this comment.



During the rulemaking process the Department conducted a fee analysis for the Sanitarians program. Section 51.202 of the Texas Occupations Code, requires the Commission to set fees in amounts reasonable and necessary to cover the costs of administering the programs under the Department's jurisdiction. Additionally, Article VIII, Section 2 of the General Appropriations Act requires the Department's revenue cover the cost of the Department's appropriations and other direct and indirect costs. The Department found that the fees in the proposed rules are above the amounts that will be required for the Department to cover its costs. Therefore, the Department has reduced the initial registration fee for a sanitarian in training from \$125 to \$120, and the initial registration fee for a sanitarian from \$140 to \$130. In addition, the renewal fee for a sanitarian in training has been reduced from \$125 to \$120, and the renewal fee for a registered sanitarian has been reduced from \$140 to \$110. The decrease in these fees will not adversely affect the administration and enforcement of the program. The reduction in the renewal fee will result in approximately \$16,320 of lost revenue to the state each year.

At its meeting on August 18, 2017, the Commission adopted the proposed rules with changes as recommended by the Department.

### **16 TAC §§119.1, 119.2, 119.10 - 119.15**

The new rules are adopted under Texas Occupations Code, Chapters 51 and 1953, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted are those set forth in Texas Occupations Code, Chapters 51 and 1953. No other statutes, articles, or codes are affected by the adoption.

#### *§119.2. Definitions.*

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

- (1) Act--Occupations Code, Chapter 1953, concerning the registration of sanitarians.
- (2) Advanced mathematics--A mathematics course equivalent to or beyond calculus that was taken at an accredited college or university.
- (3) Advisory Committee--The Registered Sanitarian Advisory Committee.
- (4) Applicant--A person who applies for registration under the Act.
- (5) Applied science--The application of general principles from environmental science, agricultural science, public health, epidemiology, food science, medical science, and sanitary engineering to solve problems.
- (6) Basic science--Science such as anatomy, bacteriology, biochemistry, biology, chemistry, geology, microbiology, pathology, physiology, and physics.
- (7) Consumer health--The application of scientific knowledge to recognize, evaluate, and control hazards associated with the distribution of contaminated, adulterated, unsafe, and misbranded foods, drugs, medical devices, cosmetics, toys, or consumer products.
- (8) Continuing education hour--Fifty minutes of continuing education training or experience, applicable to consumer health,

environmental health or sanitation, and pre-approved by the department or its designee.

(9) Commission--The Texas Commission of Licensing and Regulation.

(10) Department--The Texas Department of Licensing and Regulation.

(11) Environmental health or sanitation--The application of scientific knowledge to recognize, evaluate, and control environmental hazards and to preserve and improve environmental factors for the achievement of the health, safety, comfort, and well-being of humans, to include disaster preparedness and response to suspected or known acts of bioterrorism.

(12) Executive Director--The executive director of the Texas Department of Licensing and Regulation.

(13) Experience--Two years of full-time experience in the fields of consumer health, environmental health, or sanitation.

(14) Full-time experience--Employment, self-employment, or independent contracting for thirty-two hours or more per week in the practice of consumer health, environmental health, or sanitation.

(15) Natural science--Branches of science such as physics, chemistry, and biology that deal with matter, energy, and their interrelations and transformations, or with objectively measurable phenomena.

(16) Registered sanitarian--A department-registered public health professional qualified by specific education, specialized training, and field experience to protect the health, safety, and general welfare of the public from adverse environmental determinants.

(17) Registrant--A person registered under the Act.

(18) Sanitarian in training--A person registered in accordance with §119.21(b).

#### *§119.10. Advisory Committee.*

(a) The commission may establish an advisory committee to provide advice and recommendations to the department on technical matters relevant to the administration of this chapter. The name of the advisory committee shall be the Registered Sanitarian Advisory Committee.

(b) The advisory committee is subject to the Government Code, Chapter 2110, concerning state agency advisory boards.

(c) The advisory committee shall be composed of nine members appointed by the presiding officer of the commission. The composition of the committee shall include:

- (1) five registered sanitarians;
- (2) one professional engineer, or one on-site sewage facility (OSSF) professional who is not and has never been registered as a sanitarian in Texas;
- (3) two consumers, one of which must be a member of an industry or occupation which is regulated either by a city or county environmental health unit or department or equivalent, or by the Department of State Health Services; and
- (4) one person involved in education in the field of public, consumer, or environmental health sciences.

#### *§119.11. Officers.*

(a) The presiding officer of the commission shall, with the approval of the commission, designate a member of the advisory com-

mittee as the presiding officer of the committee to serve for a term of two years.

(b) The presiding officer of the advisory committee shall preside at all committee meetings at which he or she is in attendance. The presiding officer of the advisory committee may vote on any matter before the committee.

*§119.13. Terms; Vacancies.*

(a) Members of the advisory committee shall serve staggered six-year terms so that the terms of three members will expire on February 1 of each odd-numbered year.

(b) Members shall serve after expiration of their term until a replacement is appointed.

(c) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

(d) A member of the advisory committee may be removed from the committee pursuant to Texas Occupations Code §51.209.

*§119.14. Meetings.*

(a) The advisory committee shall meet at the call of the presiding officer of the commission or the executive director.

(b) A quorum of the advisory committee is necessary to conduct official business.

(c) Committee action shall require a majority vote of those members present and voting.

*§119.15. Reimbursement.*

(a) An advisory committee member serves without compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing duties as a committee member, subject to any applicable limitation on reimbursement provided by the General Appropriations Act.

(b) Expense reimbursements to advisory committee members:

(1) are limited to authorized expenses incurred while traveling to and from committee meetings; and

(2) must be limited to those allowed by the State of Texas Travel Allowance Guide, the department's policies governing employee travel allowances, and the General Appropriations Act.

(c) Expenses may be reimbursed to advisory committee members only when the legislature has specifically appropriated money for that purpose, and only to the extent of the appropriation.

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

Filed with the Office of the Secretary of State on August 23, 2017.

TRD-201703299

Brian E. Francis  
Executive Director

Texas Department of Licensing and Regulation  
Effective date: September 15, 2017

Proposal publication date: April 21, 2017

For further information, please call: (512) 463-8179



**16 TAC §§119.3, 119.20, 119.21, 119.23, 119.24, 119.26, 119.27, 119.70, 119.80, 119.90, 119.95**

The new rules are adopted under Texas Occupations Code, Chapters 51 and 1953, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted are those set forth in Texas Occupations Code, Chapters 51 and 1953. No other statutes, articles, or codes are affected by the adoption.

*§119.21. Registration Requirements.*

(a) To be eligible for registration as a sanitarian, an applicant must:

(1) possess a bachelor's degree from an accredited college or university including at least thirty (30) semester hours or its equivalent in a basic or applied science;

(2) possess at least two years of full-time experience in the fields of consumer health, environmental health, or sanitation. Regularly assigned duties must have included consumer health, environmental health, or sanitation. The applicant need not have had the title "sanitarian" or "sanitarian in training". The duties may include the following:

(A) regulatory inspections or evaluations of retail food establishments; retail grocery stores; food warehousing facilities; food manufacturing facilities; food service at special events; mobile food service vehicles and facilities; producer dairy farms; dairy product manufacturing facilities; frozen dessert manufacturing facilities; on-site sewage facilities; asbestos abatement processes; mass gathering events; industrial pretreatment processes (sewage); municipal sewage facilities and wastewater plants; public and semi-public swimming pools; child care facilities; long term care facilities; hospitals; correctional facilities; public and private schools; youth camps; and recreational areas for children; radiation hazards, including lasers and microwaves; and private and public water systems;

(B) site evaluation and design of on-site sewage system facilities as specified in Texas Commission on Environmental Quality rules;

(C) Hazard Analysis and Critical Control Point (HACCP) systems or processes;

(D) investigation of food borne illnesses; water borne illnesses; vector borne illnesses; zoonotic illnesses; food product contamination or adulteration; the environmental conditions surrounding reported elevated blood lead in children and adults; consumer, governmental agency or industry complaints; and animal bites;

(E) performance of vector control activities related to mosquitoes, flies and rodents; environmental assessments; code enforcement activities; and food handler or certified food service manager training;

(F) first responder to hazardous material spills and incidents; and natural and man-made disasters; or

(G) regulatory review of plans and specifications for food establishments; plans and specifications for public, semi-public and private swimming pools; and plans and specifications for on-site sewage systems facilities;

(3) pass the registration examination;

(4) submit the completed department-approved application;

(5) submit the required fees; and

(6) successfully pass a criminal history background check performed by the department.

(b) To be eligible for registration as a sanitarian in training, an applicant must:

(1) possess a bachelor's degree from an accredited college or university including at least thirty (30) semester hours or its equivalent in a basic or applied science;

(2) pass the registration examination;

(3) submit the completed department-approved application;

(4) submit the required fees; and

(5) successfully pass a criminal history background check performed by the department.

(c) A registered sanitarian in training who has obtained the necessary experience to qualify as a sanitarian may file an application to upgrade a registration to that of sanitarian. Upon payment of the required upgrade fee and approval by the department, the applicant shall be granted registration as a sanitarian.

*§119.23. Educational Requirements.*

(a) Courses acceptable to meet the initial educational requirements for examination as a sanitarian or sanitarian in training include the following:

- (1) air pollution;
- (2) anatomy;
- (3) animal science;
- (4) bacteriology;
- (5) biochemistry;
- (6) biology;
- (7) biomedical science;
- (8) biophysics;
- (9) biostatistics;
- (10) botany;
- (11) cell physiology;
- (12) chemical engineering;
- (13) chemistry;
- (14) community health;
- (15) computer science;
- (16) dairy science;
- (17) ecology;
- (18) embryology;
- (19) entomology;
- (20) environmental health;
- (21) environmental science;
- (22) environmental diseases;
- (23) environmental law;
- (24) epidemiology;
- (25) food bacteriology;

(26) food science;

(27) food technology;

(28) genetics;

(29) geophysics;

(30) geology;

(31) hazardous waste;

(32) histology;

(33) hydrogeology;

(34) hydrology;

(35) industrial hygiene;

(36) infectious diseases;

(37) limnology;

(38) mathematics;

(39) courses taken in an accredited allopathic or osteopathic school of medicine;

(40) meteorology;

(41) microbiology;

(42) molecular biology;

(43) occupational health;

(44) occupational safety;

(45) parasitology;

(46) pathology;

(47) physics;

(48) physiology;

(49) plant taxonomy;

(50) public health;

(51) public health education;

(52) public health law;

(53) radiological health;

(54) sanitary engineering;

(55) soil science;

(56) statistics;

(57) toxicology;

(58) vector control;

(59) veterinary medical courses;

(60) veterinary public health;

(61) virology;

(62) wastewater treatment;

(63) water quality; or

(64) zoology.

(b) The courses may be offered by any academic department so long as the course is acceptable.

(c) No more than six semester hours or its equivalent will be acceptable for courses in:

- (1) biophysics;
- (2) computer science;
- (3) embryology;
- (4) mathematics beyond algebra;
- (5) accredited allopathic or osteopathic courses;
- (6) meteorology;
- (7) physics;
- (8) public health education;
- (9) statistics; and
- (10) veterinary medical courses.

(d) Courses considered not acceptable are:

- (1) anthropology;
- (2) archaeology;
- (3) astronomy;
- (4) education;
- (5) geography;
- (6) government;
- (7) history;
- (8) kinesiology;
- (9) languages;
- (10) physical education;
- (11) psychology; and
- (12) sociology.

(e) Courses not listed may be submitted for consideration for acceptance by the department.

*§119.24. Examination for Registration.*

(a) The department shall review all applications prior to the examination. An applicant who meets the education and experience requirements shall be approved to take the examination.

(b) An applicant meeting the requirements for qualifications for registration as a sanitarian or a sanitarian in training who is not currently certified by the National Environmental Health Association (NEHA) as a Registered Environmental Health Specialist/Registered Sanitarian (REHS/RS) shall be approved to take the exam.

(c) The examination shall consist of a written examination prescribed by the department under the supervision of a person or agency designated by the department.

(d) The examination may be administered and graded by:

- (1) the department or the department's designee; or
- (2) the National Environmental Health Association (NEHA) or designee as a part of the certification process for the REHS/RS.

(e) The department or its designee shall notify each applicant of the results of the examination within thirty (30) days of the date of the examination.

(f) A person taking an examination must comply with the department's examination requirements under Chapter 60, Subchapter E of this title.

*§119.26. Registration Renewal.*

(a) A registration issued under this chapter expires two years from the date of issuance.

(b) To renew a registration, an applicant must:

- (1) submit a completed department-approved renewal application;
- (2) complete the continuing education requirement in §119.27;
- (3) submit the required fees; and
- (4) successfully pass a criminal history background check performed by the department.

(c) A registrant must renew the registration every two years, as determined by the department. A sanitarian in training may only renew the registration once, for a total of four years.

(d) Each registrant is responsible for renewing the registration before the expiration date and shall not be excused from paying the renewal fee. Failure to receive notification from the department prior to the expiration date of the registration will not excuse the sanitarian from renewing.

(e) Registration Expiration. A person whose registration has expired may not claim to be a sanitarian or sanitarian in training or use the titles "sanitarian" or "sanitarian in training".

*§119.70. Standards of Conduct.*

(a) A registrant shall not use advertising that is false, misleading, or deceptive, or advertising that is not readily subject to verification, including advertising that:

- (1) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;
- (2) makes a customer or client likely to create an unjustified expectation about the results of a service or procedure;
- (3) compares a professional's service with another professional's services unless the comparison can be factually substantiated;
- (4) causes confusion or misunderstanding as to the credentials, education, or registration of a professional; or
- (5) advertises or represents in the use of a professional name, title, or professional identification that is expressly or commonly reserved to or used by another profession or professional.

(b) A registrant shall notify each client of the name, mailing address, website, and telephone number of the department for the purpose of directing complaints to the department by providing notification:

- (1) on each written contract for services of a registrant;
- (2) on a sign prominently displayed in the primary place of business of each registrant; or
- (3) in a bill for services provided by a registrant to a client or third party.

*§119.80. Fees.*

(a) All fees submitted to the department are nonrefundable.

(b) The schedule of fees is as follows:

- (1) Initial fee for application and registration:
  - (A) sanitarian in training--\$120;

- (B) registered sanitarian--\$130.
- (2) Registration renewal fee:
  - (A) sanitarian in training--\$100;
  - (B) registered sanitarian--\$110.
- (3) Fee to upgrade from a sanitarian in training to a sanitarian--\$25.
- (4) A duplicate/replacement fee for registration certificate--\$25.
- (5) Continuing education sponsor approval fee--\$100 per sponsor. Pre-approved providers are exempt from this fee.
- (6) Late renewal fees for registrations issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).
- (7) A dishonored/returned check or payment fee is the fee prescribed under §60.82 of this title (relating to Dishonored Payment Device).
- (8) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).

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

Filed with the Office of the Secretary of State on August 23, 2017.

TRD-201703300  
 Brian E. Francis  
 Executive Director  
 Texas Department of Licensing and Regulation  
 Effective date: November 1, 2017  
 Proposal publication date: April 21, 2017  
 For further information, please call: (512) 463-8179



**TITLE 22. EXAMINING BOARDS**  
**PART 11. TEXAS BOARD OF NURSING**  
**CHAPTER 223. FEES**  
**22 TAC §223.1**

**Introduction.** The Texas Board of Nursing (Board) adopts amendments to §223.1, concerning Fees. The amendments are adopted without changes to the proposed text published in the July 14, 2017, issue of the *Texas Register* (42 TexReg 3534) and will not be republished.

**Reasoned Justification.** The amendments are adopted under the authority of the Occupations Code §301.151 and §301.155 and the Health and Safety Code §105.011 and are necessary to comply with the statutory requirements of Senate Bill (SB) 1 (the General Appropriations Act for the years ending August 31, 2018, and August 31, 2019); House Bill (HB) 280; and HB 2950, all enacted during the 85th legislative session.

SB 1 includes a contingency revenue rider, which requires the Board to raise an additional \$759,439 to fund nursing salary adjustments, increased funding for the Board's peer assistance program, and legal costs. Additionally, the Board estimates an

additional \$667,000 will be needed to fund the requirements of HB 280. HB 280 creates a grant program to fund innovative approaches to reducing verbal and physical workplace violence against nurses. The Board also estimates an additional \$50,050 will be needed to meet the budgetary implications of HB 2950. HB 2950 requires the removal of certain disciplinary actions from its website. The Board estimates it must raise \$1,476,489 to meet these requirements of SB 1, HB 280, and HB 2950. In order to meet these requirements, the Board is adopting amendments related to its licensure renewal fees for registered nurses (RNs) and licensed vocational nurses (LVNs).

The adopted amendments will increase the renewal fee for licensed vocational nurses by \$2 per biennium, resulting in a new renewal fee of \$42 for licensed vocational nurses. The adopted amendments will also increase the renewal fee for registered nurses by \$5 per biennium, resulting in a new renewal fee of \$65 for registered nurses. The Board anticipates a total generated revenue amount of \$1,700,000 as a result of these increased fees, which should be sufficient to meet the budgetary requirements of SB 1, HB 280, and HB 2950.

**How the Section Will Function.** Adopted amended §223.1(a)(3)(A) sets the licensure renewal fee for registered nurses at \$65 each biennium. Adopted amended §223.1(a)(3)(B) sets the licensure renewal fee for licensed vocational nurses at \$42 each biennium.

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

**Statutory Authority.** The amendments are adopted under the Occupations Code §301.151 and §301.155 and the Health and Safety Code §105.011.

Section 301.151 of the Occupations Code authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.155(a) of the Occupations Code provides that the Board by rule shall establish fees in amounts reasonable and necessary to cover the costs of administering Chapter 301.

Section 105.011 of the Health and Safety Code provides that, to the extent funding is available, the nursing resource section established under §105.002 shall administer a grant program to fund innovative approaches for reducing verbal and physical violence against nurses in hospitals, freestanding emergency medical care facilities, nursing facilities, and home health agencies.

Section 105.011(f) provides that the nursing resource section may use money transferred to the department from the Texas Board of Nursing under §301.155 of the Occupations Code to fund the grants authorized by this section.

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

Filed with the Office of the Secretary of State on August 24, 2017.

TRD-201703312

Jena Abel  
Deputy General Counsel  
Texas Board of Nursing  
Effective date: September 13, 2017  
Proposal publication date: July 14, 2017  
For further information, please call: (512) 305-6822

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**PART 14. TEXAS OPTOMETRY BOARD**

**CHAPTER 271. EXAMINATIONS**

**22 TAC §271.2**

The Texas Optometry Board adopts amendments to §271.2 of Chapter 271, Title 22, without changes to the proposed text as published in the June 23, 2017, issue of the *Texas Register* (42 TexReg 3224).

The amendments implement changes to Texas Optometry Act §351.254(a) and §351.2526, and insure compliance with federal law.

No comments were received.

The amendments are adopted under the Texas Optometry Act, Texas Occupations Code, §351.151, and Senate Bill 314, 85th Legislature, Regular Session. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets Senate Bill 314, 85th Legislature, Regular Session, as amending the Optometry Act to remove certain application requirements and require accessing information in a national databank.

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

Filed with the Office of the Secretary of State on August 22, 2017.

TRD-201703268  
Chris Kloeris  
Executive Director  
Texas Optometry Board  
Effective date: September 11, 2017  
Proposal publication date: June 23, 2017  
For further information, please call: (512) 305-8500

◆ ◆ ◆  
**CHAPTER 273. GENERAL RULES**

**22 TAC §273.8**

The Texas Optometry Board adopts amendments to §273.8 of Chapter 273, Title 22, without changes to the proposed text published in the June 23, 2017, issue of the *Texas Register* (42 TexReg 3225).

The amendments implement changes to Texas Optometry Act §351.3045 and clarify notice requirements for license renewal.

No comments were received.

The amendments are adopted under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.303, and Senate

Bill 314, 85th Legislature, Regular Session. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. Section 351.303 requires notice of license expiration. The agency interprets Senate Bill 314, 85th Legislature, Regular Session as amending the Optometry Act to require all licensees to submit a fingerprint complete criminal history report.

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

Filed with the Office of the Secretary of State on August 22, 2017.

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Chris Kloeris  
Executive Director  
Texas Optometry Board  
Effective date: September 11, 2017  
Proposal publication date: June 23, 2017  
For further information, please call: (512) 305-8500

◆ ◆ ◆  
**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

**PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT**

**CHAPTER 65. WILDLIFE**

**SUBCHAPTER B. DISEASE DETECTION AND RESPONSE**

In a duly noticed meeting on August 24, 2017, the Texas Parks and Wildlife Commission adopted new §65.83 and amendments to §65.86 and §65.91, concerning Disease Detection and Response. New §65.83 is adopted with changes to the proposed text as published in the July 21, 2017, issue of the *Texas Register* (42 TexReg 3619). The amendments to §65.86 and §65.91 are adopted without changes and will not be republished.

The change to §65.83 eliminates paragraph (2), which is superfluous. As proposed, paragraph (2) stipulated that TC 3 deer breeding facilities located with a Containment Zone (CZ) or Surveillance Zone (SZ) must be in compliance with §65.94, concerning Breeding Facility Minimum Movement Qualification and §65.95, concerning Movement of Breeder Deer, in order to release deer to immediately adjoining acreage, which was intended as a point of clarification. Because paragraph (4) requires all deer breeding facilities to be in compliance with all applicable provisions of Chapter 65, Subchapter B (which includes §65.94 and §65.95), paragraph (2) is unnecessary. Therefore, the change removes paragraph (2) and redesignates the remaining provisions accordingly.

The change to §65.93 also eliminates language in paragraph (3) (paragraph (4) as proposed) alluding to herd orders issued by the Texas Animal Health Commission (TAHC) signed by the permit holder. The department has determined that the language as proposed is unnecessary because a TAHC hold order is not valid unless it is signed.

New §65.83, concerning Special Provisions, allows for the release of breeder deer from a TC 3 facility within a Containment Zone (CZ) or Surveillance Zone (SZ) to adjoining acreage under the same ownership, provided the release is authorized under a herd plan issued by the Texas Animal Health Commission (TAHC), which may also specify testing requirements, and the facility is in compliance with all applicable provisions of the subchapter unless exempted by a herd plan. In a recent rulemaking, the department liberalized certain provisions of Subchapter B, Division 1 that relate to the movement of live deer to or from deer breeding facilities within a CZ. Those liberalizations allowed for the release of breeder deer in a SZ from a deer breeding facility located outside a SZ if authorized by Division 2 of this subchapter, but inadvertently resulted in a complete prohibition on the release of breeder deer from TC 3 facilities located within a CZ or SZ. The department intended to allow for release of breeder deer from a TC 3 breeding facility located within a CZ or SZ and designated under the provisions of Division 2 as movement qualified (MQ), provided that facility is operating under a herd plan that authorizes the release of deer to adjoining acreage under the same ownership and is in compliance with all applicable provisions of this subchapter unless exempted by a herd plan. The new section remedies that oversight.

The amendments to §65.86, concerning Preemption, and §65.91, concerning General Provisions, alter the provisions of those sections to achieve the intended harmonization of the provisions of Subchapter B, Division 1 with the provisions of Subchapter B, Division 2 and the remainder of Chapter 65. In 2013 the department adopted §§65.80-65.82 and 65.84-65.89 in response to the discovery of chronic wasting disease (CWD) in far west Texas. The rules created mechanisms to contain and limit the spread of CWD following discovery. At that time, §§65.80-65.82 and 65.84-65.89 constituted the entirety of Subchapter B; however, in 2016 the department adopted §§65.90-65.99 to address the discovery of CWD in deer breeding facilities, which necessitated the designation of §§65.80-65.82 and 65.84-65.89 as Division 1 and §§65.90-65.99 as Division 2. The provisions of §65.86 currently refer to the resolution of conflicts between Subchapter B and any other subchapter of Chapter 65, and should be altered to apply to conflicts between Division 1 and Division 2 of Subchapter B and conflicts between Division 1 of Subchapter B and any other subchapter of Chapter 65. The amendment to §65.86 accomplishes that. The amendment to §65.91 similarly clarifies the relationships between Division 2, Division 1, and the remainder of Chapter 65.

The department has engaged in a number of rulemakings to address, contain, and manage chronic wasting disease following its discovery in Texas in both captive and free-ranging populations. CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (referred to collectively as susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle and commonly known as "Mad Cow Disease"), and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Much remains unknown about CWD. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other

species are still being investigated. What is known is that CWD is invariably fatal to certain species of cervids, and is transmitted both directly (through animal-to-animal contact) and indirectly (through environmental contamination). Moreover, a high prevalence of the disease in free-ranging populations correlates with deer population declines and human dimensions research indicates that hunters will avoid areas of high CWD prevalence. If CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion dollar ranching, hunting, wildlife management, and real estate economies could be significant.

The department received two comments opposing adoption of the proposed rules. Both commenters provided a reason or rationale for opposing adoption.

One commenter opposed adoption and stated that deer breeding should not be permitted. The department disagrees with the comment and responds that under Parks and Wildlife Code, Chapter 43, Subchapter L, the department is required to issue a deer breeding permit to a qualified person. No changes were made as a result of the comment.

One commenter opposed adoption and stated opposition to rules concerning coastal fisheries, which isn't germane to this rulemaking. No changes were made as a result of the comment.

The department received eight comments supporting adoption of the proposed rules.

## DIVISION 1. CHRONIC WASTING DISEASE (CWD)

### 31 TAC §65.83, §65.86

The amendment and new section are adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter C, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation; Subchapter E, which requires the commission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds, urban white-tailed deer removal, and trapping and transporting surplus white-tailed deer; Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter; Subchapter R, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that white-tailed deer may be temporarily detained in an enclosure; Subchapter R-1, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that mule deer may be temporarily detained in an enclosure (although the department has not yet established a DMP program for mule deer authorized by Subchapter R-1); and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

#### *§65.83. Special Provisions.*

A TC 3 breeding facility located in a CZ or SZ may release breeder deer to adjoining acreage under the same ownership, provided:

- (1) the title in the county deed records reflects that the surface of the release site and of the breeding facility is held by the same owner or owners;

(2) the release is specifically authorized in a herd plan prepared for the facility by the Texas Animal Health Commission and TPWD; and

(3) the TC 3 breeding facility that releases breeder deer under the provisions of this section is in compliance with all applicable provisions of this subchapter, including provisions relating to the testing of released breeder deer, except as specifically exempted under a herd plan prepared and approved by the department and TAHC.

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

Filed with the Office of the Secretary of State on August 24, 2017.

TRD-201703327

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Effective date: September 13, 2017

Proposal publication date: July 21, 2017

For further information, please call: (512) 389-4775



## DIVISION 2. CHRONIC WASTING DISEASE - MOVEMENT OF DEER

### 31 TAC §65.91

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter C, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation; Subchapter E, which requires the commission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds, urban white-tailed deer removal, and trapping and transporting surplus white-tailed deer; Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter; Subchapter R, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that white-tailed deer may be temporarily detained in an enclosure; Subchapter R-1, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that mule deer may be temporarily detained in an enclosure (although the department has not yet established a DMP program for mule deer authorized by Subchapter R-1); and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

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

Filed with the Office of the Secretary of State on August 24, 2017.

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Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 9. PROPERTY TAX ADMINISTRATION

##### SUBCHAPTER F. LIMITATION ON APPRAISED VALUE ON CERTAIN QUALIFIED PROPERTIES

###### 34 TAC §§9.1051, 9.1052, 9.1055, 9.1058

The Comptroller of Public Accounts adopts amendments to §9.1051, concerning definitions; and §9.1052, concerning forms, with changes to the proposed text as published in the May 12, 2017, issue of the *Texas Register* (42 TexReg 2523). The comptroller adopts amendments to §9.1055 concerning comptroller application review and agreement to limit appraised value, and §9.1058 concerning miscellaneous provisions, without changes to the proposed text as published in the May 12, 2017, issue of the *Texas Register* (42 TexReg 2523).

The amendments to §9.1051 update the name of the division of the comptroller's office responsible for administration of Tax Code, Chapter 313 in paragraph (13) from the Economic Development and Analysis Division or ED&A to the Data Analysis and Transparency Division or DAT; and update the website for the United States Census Bureau in paragraph (25).

The amendments to §9.1052 update the toll-free phone number for requesting forms from the comptroller and the web address for viewing and downloading forms on the comptroller's website, and change "web site" to "website" in subsection (b). The amendments to §9.1052 also adopt by reference two existing forms with changes. In the form adopted by reference in subsection (a)(2), Section 4 on qualified property is being changed to request the county appraisal district in which the project is located, the total market value of all qualified property from all county appraisal district property records subject to the 313 agreement, the total value of all applicable exemptions for the qualified property, the total taxable value for school interest and sinking tax purposes for the qualified property, the limitation amount on appraised value specified as qualified in the 313 agreement, and the total taxable value for school maintenance and operations tax purposes for the qualified property. In the form adopted by reference in subsection (a)(2), Section 5B on wage and employment information for applications after January 1, 2014 is being changed to include the same questions in Section 5A, number 8; and the rule defining qualifying jobs, that is, 34 TAC §9.1051(30), is being included in Section 5B question 6; and parts of the titles for Sections 5A and 5B are being modified to boldface font.

The amendment to §9.1055, subsection (a)(5) requires documents that are submitted to the comptroller in an electronic for-



mat to be in compliance with the accessibility standards and specifications described in 1 TAC Chapters 206 and 213.

The amendments to §9.1058 corrects a typographical error in subsection (a) by replacing the word "contract" with "contact" and changes "web site" to "website" in subsection (d)(1). New subsection (f) clarifies the scope of "series of agreements" as referenced in Tax Code, §313.027.

Two comments were received from Renn Neilson and Matt Larsen with Baker Botts LLP and Kevin O'Hanlon with O'Hanlon, Demerath & Castillo Attorneys and Counselors at Law.

Mr. Neilson, Mr. Larsen and Mr. O'Hanlon suggest that the comptroller can accomplish its goal to restrict partial assignments without adopting proposed §9.1051(31) by exercising its discretion to reject them as authorized under Sections 10.2 and 10.3 of Form 50-826 Texas Economic Development Act Agreement. The comptroller agrees with this comment and declines to adopt the definition of assignment in proposed §9.1051(31), which would have prohibited all partial assignments. For consistency, the comptroller also declines to adopt the proposed new language in Form 50-772, which states "Applicable only to certain 3-digit projects" and the proposed new language in Form 50-773A which states "Only 3-digit projects may have partial assignments".

In addition, Mr. Neilson and Mr. Larsen comment that §9.1055(a)(5) would be burdensome on applicants and suggest that either the comptroller charge a small additional application fee for Americans with Disability Act (ADA) accessibility conversions, or consider providing certain convertible forms and guidance on ADA accessibility conversions. The comptroller disagrees with this comment and declines to make the suggested changes. The comptroller cannot post substantive documents or information submitted by applicants on its website that are not accessible to persons with disabilities because of Texas state and federal accessibility laws. The comptroller has, therefore, determined that electronic and information resources (EIR) compliance is accomplished most effectively and efficiently by requiring applicants to submit already-accessible documents or information. Although compliance with proposed §9.1055(a)(5) may require an applicant at the outset to spend some amount of time researching or selecting its preferred method for creating accessible documents or information, the comptroller does not anticipate that amount of time to be significant, or that compliance with the rule as adopted will represent an ongoing burden upon applicants. Rather, the comptroller expects applicants to consider the variety of accessibility tools available and ultimately choose tools that are best-suited to the applicant's needs with respect to time and cost-saving qualities. The Texas Department of Information Resources is a good resource for information on both free and paid accessibility tools and information, and the comptroller encourages applicants to review that agency's guidance available here: <http://dir.texas.gov/View-Resources/Pages/Content.aspx?id=36>. Additional guidance on accessibility may also be provided to applicants on the Chapter 313 program's website upon adoption of these rules.

The amendments are adopted under Tax Code, §313.031, which authorizes the comptroller to adopt rules necessary for the implementation and administration of Tax Code, Chapter 313.

The amendments implement Tax Code, Chapter 313.

*§9.1051. Definitions.*

The following phrases, words and terms, when used in this subchapter shall have the following meanings, unless the context clearly indicates

otherwise. Words defined in Tax Code, Chapter 313 and not defined in this subchapter shall have the meanings provided by Tax Code, Chapter 313.

(1) Agreement--The written agreement between the governing body of a school district and the approved applicant on the form adopted by reference in §9.1052 of this title (relating to Forms) to implement a limitation on the appraised value for school district maintenance and operations ad valorem property tax purposes on an entity's qualified property, required by Tax Code, §313.027(d).

(2) Applicant--An entity that has applied for a limitation on appraised value for school district maintenance and operations ad valorem property tax purposes on the entity's property as provided by Tax Code, Chapter 313.

(3) Application--An application for limitation of appraised value limitation for school district maintenance and operations ad valorem property tax purposes on an entity's qualified property on the form adopted by reference in §9.1052 of this title, the schedules attached thereto, and the documentation submitted by an entity for the purpose of obtaining an agreement for a limitation on appraised value from a school district.

(4) Application amendment--Information submitted by an applicant intended to be considered as part of or in support of the application that amends by replacing information that was previously submitted by applicant.

(5) Application supplement--Information submitted by an applicant intended to be considered as part of or in support of the application that has not been previously submitted.

(6) Approved applicant--An applicant whose application has been approved by a school district for a limitation on appraised value agreement according to the provisions of Tax Code, Chapter 313, including any assignees of that applicant.

(7) Application review start date--The later date of either the date on which the school district issues its written notice that an applicant has submitted a completed application or the date on which the comptroller issues its written notice that an applicant has submitted a completed application.

(8) Appraisal district--The county appraisal district that would appraise the property which is the subject of an application.

(9) Appraised value--The value of property as defined by Tax Code, §1.04(8).

(10) Completed application--An application in the form and number and containing all the information required pursuant to §9.1053 of this title (relating to Entity Requesting Agreement to Limit Appraised Value) that has been determined by the school district and the comptroller to include all minimum requirements for consideration.

(11) Comptroller--The Texas Comptroller of Public Accounts or the designated representative of the Texas Comptroller of Public Accounts acting on behalf of the comptroller.

(12) Entity--Any entity upon which a tax is imposed by Tax Code, §171.001 including a combined group as defined by Tax Code, §171.0001(7) or members of a combined group, provided however, an entity as defined herein does not include a sole proprietorship, partnership or limited liability partnership.

(13) Data Analysis and Transparency Division or DAT--The Data Analysis and Transparency Division of the comptroller's office, or the division of the comptroller's office responsible for the ad-

ministration of Tax Code, Chapter 313, acting through the designated division director or a representative thereof.

(14) Non-qualifying job--A permanent position of employment to perform work:

(A) that includes at a minimum the following requirements:

(i) that is based on the qualified property;

(ii) that is in direct support of activity identified in Tax Code, §313.024(b);

(iii) for at least 1,600 hours a year;

(iv) over which the applicant has significant degree of control of:

(I) the creation of the job;

(II) the job description;

(III) the job characteristics or performance of the job through either a business, contractual or vendor relationship; and

(B) is not a qualifying job as that term is defined in Tax Code, §313.021(3) and these rules.

(15) Qualified investment--Property that meets the requirements of Tax Code, §313.021(1).

(16) Qualified property--Land, new building, or new improvement erected or affixed to the land after the application review start date, or eligible tangible personal property first placed in service after the application review start date that:

(A) meets the requirements of Tax Code, §313.021(2), and that is used either as an integral part, or as a necessary auxiliary part, in manufacturing, research and development, a clean coal project, an advanced clean energy project, renewable energy electric generation, electric power generation using integrated gasification combined cycle technology, nuclear electric power generation, a Texas Priority Project, or a computer center;

(B) is clearly distinguished from any existing property and clearly distinguished from any proposed property that is not a new improvement;

(C) is separate from, and not a component of, any existing property;

(D) if buildings or improvements, did not exist before the application review start date or if tangible personal property, was first placed in service after the application review start date;

(E) is not used to renovate, refurbish, upgrade, maintain, modify, improve, or functionally replace existing buildings or existing improvements;

(F) does not replace or modify existing buildings other than expansion of an existing building; and

(G) is not used solely for the transportation of product prior to the commencement, or subsequent to the completion, of an applicable qualifying activity described in subparagraph (A) of this paragraph.

(17) School district--A school district that has received an application for a limitation on appraised value pursuant to Tax Code, Chapter 313 or the designated representative of the school district acting on behalf of the school district.

(18) SOAH--State Office of Administrative Hearings.

(19) Substantive document--A document or other information or data in electronic media determined by the comptroller to substantially involve or include information or data significant to an application, the evaluation or consideration of an application, or the agreement or implementation of an agreement for limitation of appraised value pursuant to Tax Code, Chapter 313. The term includes, but is not limited to, any application requesting a limitation on appraised value and any amendments or supplements, any economic impact evaluation made in connection with an application, any agreement between applicant and the school district and any subsequent amendments or assignments, any school district written finding or report filed with the comptroller as required under this subchapter, and any completed Annual Eligibility Report (Form 50-772A) submitted to the comptroller.

(20) Agreement holder--An entity that has executed an agreement with a school district.

(21) Average weekly wage for manufacturing jobs--Either the average weekly wage:

(A) for all jobs primarily engaged in activities described in Sectors 31 - 33 of the 2007 North American Industry Classification System in a county as identified by the Texas Workforce Commission's Quarterly Employment and Wages (QCEW) webpage at <http://www.tracer2.com/cgi/dataanalysis/AreaSelection.asp?tableName=Industry>; or

(B) for all manufacturing jobs or if the information for subparagraph (A) of this paragraph is not available, as determined by data published annually by the Texas Workforce Commission for the purposes of Tax Code, Chapter 313 for each Council of Government Region, based on Bureau of Labor Statistics, Texas Occupational Employment and Wages (OES) data, as it is posted at <http://www.tracer2.com/admin/uploadedPublications/COGWages.pdf>.

(22) Average weekly wage for non-qualifying jobs--The average weekly wage as identified by the Texas Workforce Commission Quarterly Employment and Wages (QCEW) average weekly wages for all private industries for the most recent four quarterly periods for which data is available at the time that an application is deemed complete, as it is posted at <http://www.tracer2.com/cgi/dataanalysis/AreaSelection.asp?tableName=Industry>.

(23) First placed in service--The first use of the property by the agreement holder.

(24) New improvement--A building, structure, or fixture that, after the application review start date:

(A) is a discrete unit of property erected on or affixed to land eligible to be qualified property; and

(B) is not erected or affixed as part of maintenance, renovation, refurbishment, improvement, modification, or upgrade of existing property, nor is newly added or proposed to be added property functionally replacing existing property, provided however that a proposed improvement may be considered a new improvement if it is an addition to an existing building that will contain new tangible personal property that did not exist before the application review start date.

(25) Per capita income--Per capita money income in the past 12 months as determined by the United States Census Bureau and reported at its website <http://www.census.gov>.

(26) Strategic investment area--An area that is:

(A) a county within this state with unemployment above the state average and per capita income below the state average;

(B) an area within this state that is a federally designated urban enterprise community or an urban enhanced enterprise community; or

(C) a defense economic readjustment zone designated under Government Code, Chapter 2310.

(27) Texas Economic Development Act Agreement--The form, adopted by reference in §9.1052 of this title, which provides a template for the terms of an agreement to implement a limitation on appraised value on property within a school district and that has the title Agreement For Limitation On Appraised Value Of Property For School District Maintenance And Operations Taxes.

(28) Texas Priority Project--A project on which the applicant commits to place in service qualified investment of more than \$1 billion during the qualifying time period, based on the comptroller review of the application submitted by the school district.

(29) Unemployment--The most recent calendar year unemployment rate, not seasonally adjusted, as determined by the Labor Market & Career Information Department (LMCI) of the Texas Workforce Commission and reported at its website <http://www.tracer2.com/cgi/dataanalysis/AreaSelection.asp?table-Name=Labforce>.

(30) Qualifying job--A permanent position of employment that includes at a minimum the following requirements:

(A) provides work for at least 1600 hours a year;

(B) is in direct support of activity identified in Tax Code, §313.024(b);

(C) is based on the qualified property;

(D) is a job over which the applicant has significant degree of control of:

(i) the creation of the job;

(ii) the job description;

(iii) the job characteristics or performance of the job through either a business, contractual or vendor relationship;

(E) is covered by a group health benefit plan for which the applicant offers to pay at least 80% of the premiums or other charges assessed for employee-only coverage under the plan, regardless of whether an employee may voluntarily waive the coverage;

(F) pays at least 110% of the county average weekly wage for manufacturing jobs in the county where the job is located;

(G) that has not been transferred from another part of the state; and

(H) that has not been created to replace a previous employee.

§9.1052. *Forms.*

(a) The comptroller adopts by reference the following forms:

(1) Application for Appraised Value Limitation on Qualified Property (Form 50-296A);

(2) Annual Eligibility Report (Form 50-772A);

(3) Biennial Progress Report for Texas Economic Development Act (Form 50-773A);

(4) Job Creation Compliance Report (Form 50-825);

(5) Biennial School District Cost Data Request (CDR) (Form 50-827); and

(6) Texas Economic Development Act Agreement (Form 50-826).

(b) Copies of the forms are available for inspection at the office of the Texas Register or may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528. The forms may be viewed or downloaded from the comptroller's website, at <https://www.comptroller.texas.gov/economy/local/ch313/forms.php>. Copies may also be requested by calling our toll-free number, (800) 531-5441, extension 34679.

(c) In special circumstances, a school district may obtain prior approval in writing from the comptroller to use an application or agreement form that requires additional information, or sets out the required information in different language or sequence than that which this section requires.

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

Filed with the Office of the Secretary of State on August 22, 2017.

TRD-201703263

Lita Gonzalez

General Counsel

Comptroller of Public Accounts

Effective date: September 11, 2017

Proposal publication date: May 12, 2017

For further information, please call: (512) 475-0387



## PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

### CHAPTER 67. HEARINGS ON DISPUTED CLAIMS

#### 34 TAC §67.201

The Employees Retirement System of Texas (ERS) adopts amendments to 34 Texas Administrative Code (TAC) Chapter 67, concerning Hearings on Disputed Claims, §67.201, concerning Procedures Governing Bid Protests, without changes to the proposed text as published in the July 7, 2017, issue of the *Texas Register* (42 TexReg 3473). The amendments were approved by the ERS Board of Trustees at its August 23, 2017, meeting. This section will not be republished.

Section 67.201, Procedures Governing Bid Protests, is amended to update the roles of ERS staff involved in the bid protest process due to the reorganization of procurement functions within ERS. Vendors will file formal bid protests with the Director of Procurement and Contract Oversight. The amendment also directs when a protest must be filed in order to be filed timely and takes into consideration recent updates to the Comptroller of Public Accounts' bid protest rules.

The amendment also broadens when a protesting party may be required to post a bond, and permits ERS to require a bond when it is necessary for ERS to utilize professional services by actuaries, consultants or other professionals in its efforts to resolve the protest. Posting of a bond in these instances is in the best interest of the expenditure of ERS' trust funds and is necessary to limit or prevent the filing of protests that are frivolous, filed in bad faith, filed for the purpose of delaying the solicitation and/or

award process, or for other reasons not supported by applicable law and facts.

No comments were received on the proposed rule amendments.

The amendments are adopted under Texas Government Code §815.102(a)(4) and (5), which provide authorization for the ERS Board of Trustees to adopt rules for hearings on contested cases or disputed claims and the transaction of any other business of the Board.

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

Filed with the Office of the Secretary of State on August 23, 2017.

TRD-201703301

Paula A. Jones

Deputy Executive Director and General Counsel

Employees Retirement System of Texas

Effective date: September 12, 2017

Proposal publication date: July 7, 2017

For further information, please call: (877) 275-4377



## PART 11. TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

### CHAPTER 306. CREDITABLE SERVICE FOR MEMBERS OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

#### 34 TAC §306.3

The State Board of Trustees (Board) of Texas Emergency Services Retirement System (System) adopts new §306.3, relating to Qualified Service Credit for Eligible Active Military Duty, without changes to the proposed text as published in the June 30, 2017, issue of the *Texas Register* (42 TexReg 3349).

New §306.3 is adopted to conform with provisions in the Uniformed Services Employment and Re-Employment Rights Act (38 U.S.C. §4301 et seq.) (USERRA) as required by Title 8, Texas Government Code, Subtitle H, Texas Emergency Services Retirement System, §863.002. Section 863.002 requires the System to grant qualified services credit for military duty in accordance with §414(u) of the Internal Revenue Code of 1986 (26 U.S.C. §414(u)) and other applicable federal law. The System is required to adopt rules to address credit for military service as contemplated by USERRA. The new rule outlines the policy by which the System will verify military service, set deadlines, and collect payment for creditable service that a System member in active military service may receive.

The Board received no public comment on the proposal.

The new §306.3, relating to Qualified Service Credit for Eligible Active Military Duty is adopted under the authority granted in Title 8, Texas Government Code, Subtitle H, Texas Emergency Services Retirement System §863.002, §865.006(b).

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

Filed with the Office of the Secretary of State on August 21, 2017.

TRD-201703257

Kevin Deiters

Executive Director

Texas Emergency Services Retirement System

Effective date: September 10, 2017

Proposal publication date: June 30, 2017

For further information, please call: (512) 936-3372



## CHAPTER 310. ADMINISTRATION OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

### 34 TAC §310.6

The State Board of Trustees (Board) of Texas Emergency Services Retirement System (System) published notice of a proposed amendment to §310.6 of Title 34 in the June 30, 2017, issue of the *Texas Register* (42 TexReg 3350). The amended section is adopted with changes to clarify language regarding contributions to the System. The amended section also has the purpose of clarifying how new and existing rules affect payable contributions regarding members who fall under the Uniformed Services Employment and Re-Employment Rights Act (38 U.S.C. §4301 et seq.) (USERRA), Family and Medical Leave Act of 1993 (29 U.S.C. §2601 et seq.) (FMLA), and temporary disability.

The Board has received no public comment on the amended section., and adopts amendments to §310.6 as published in the June 30, 2017, issue of the *Texas Register* (42 TexReg 3350), with an adoption of a correction of error as published in the July 21, 2017, issue of the *Texas Register* (42 TexReg 3665) due to an error in submission by the System. To correct the error, the board omits "during a period of temporary disability or" found in subsection (e) in the June 30th issue of the *Texas Register* (42 TexReg 3350). The correction of error affects no new person, entities, or subjects other than those given notice under the proposed amendment to §310.6.

The State Board of Trustees (Board) of Texas Emergency Services Retirement System (System) adopts amendments to §310.6 relating to Local Contributions under authority granted by Title 8, Texas Government Code, Subtitle H, Texas Emergency Services Retirement System, §865.014.

#### §310.6. *Local Contributions.*

(a) Except as otherwise provided by this section, each participating department shall make a contribution for each month in which a volunteer or auxiliary employee of the participating department is a member of the pension system. The monthly contribution is composed of two parts, as outlined in subsections (b) and (c) of this section. Contributions are payable for each month of service regardless of whether the member receives a year of qualified service. Contributions are payable as provided by §865.014, Government Code, and §310.8 of this title. Contributions required under this section are not considered compensation to the members for whom they are made.

(b) The Part One contribution is the portion of the participating department's contribution that is used for purposes of calculating the benefit of a member as provided in §308.2 of this title. The Part One contribution will be no less than the minimum contribution amount provided in subsection (d) of this section.

(c) The Part Two contribution is the portion of the participating department's contribution that is applied to reduce the unfunded actuarial accrued liability of the pension system as contemplated under §861.001(1) and §864.002(a)(1), Government Code. The Part Two contribution is not used for purposes of calculating the benefit of a member as provided in §308.2 of this title. The state board may establish or modify the Part Two contribution based on the pension system's most recent actuarial valuation approved by the state board, but in no case shall the Part Two contribution exceed 15 percent of the participating department's Part One contribution. Any Part Two contribution established or modified by the state board will be effective beginning on September 1 following the state board's approval of such Part Two contribution. A participating department shall make the Part Two contribution for each month as provided in subsection (a) of this section.

(d) The minimum contribution rate for each participating department is \$36 per member. After August 31, 2015, the minimum contribution rate for each participating department is \$36 per member plus any Part Two contribution that might be charged by the pension system, as provided in subsection (c) of this section. A participating department may elect to make Part One contributions at a rate greater than the minimum contribution amount by notifying the Executive Director in writing of the rate.

(e) Contributions are payable when leave is taken under the Family and Medical Leave Act of 1993 (29 U.S.C. §2601 et seq.). Contributions are not payable during a period of temporary disability.

(f) Contributions are not immediately payable during a period of military leave while on active military duty if (1) the military duty constitutes qualified military service in uniformed services, as provided under the Uniformed Services Employment and Re-Employment Rights Act, 38 United States Code §4301 et seq. (USERRA) and (2) the member is designated as on military leave by the pension system upon receiving documentation from the participating department that substantiates such active military duty under procedures developed by the pension system pursuant to Rule §306.3(c). Contributions for the period of active military duty shall be paid by the participating department upon the member's return to the participating department in accordance with Rule §306.3(e) and as required by USERRA.

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

Filed with the Office of the Secretary of State on August 21, 2017.

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Kevin Deiters  
Executive Director  
Texas Emergency Services Retirement System  
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Proposal publication date: June 30, 2017  
For further information, please call: (512) 936-3372



### 34 TAC §310.8

The State Board of Trustees (Board) of Texas Emergency Services Retirement System (System) adopt amendments to §310.8 relating to Billings without changes to the proposed text as published in the June 30, 2017, issue of the *Texas Register* (42 TexReg 3351).

The amended section is adopted to simplify the billing process and require the local board of each Participating Department (Department) to certify System roster reports so that all eligible

persons of the Departments are enrolled into the System as required by Title 8, Texas Government Code, Subtitle H, Texas Emergency Services Retirement System, §862.002.

The Board has received one public comment on the amended section from a representative of a local Board of a Department which questions the need for a meeting of the Local board to complete a System roster report. After considering this comment, the Board will adopt amendments to §310.8 as published in the June 30th, 2017, issue of the *Texas Register* (42 TexReg 3351) without any changes. The Board decided in this fashion by reasoning that members are currently enrolled during an open meeting of the local board, and that requiring an open meeting of the local board to certify a System roster report will ensure that the local board enroll all eligible persons at the Department.

The amendments are adopted under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, §§863.004, 864.0135, 865.014, and 865.016, which allow the System to collect contributions from Participating Departments for the administration of the fund.

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

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

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## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

#### CHAPTER 15. DRIVER LICENSE RULES SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES 37 TAC §15.49

The Texas Department of Public Safety (the department) adopts amendments to §15.49, concerning Proof of Domicile. This rule is adopted without changes to the proposed text as published in the June 30, 2017 issue of the *Texas Register* (42 TexReg 3353) and will not be republished.

These amendments clarify residency requirements for persons under the care and conservatorship of the Department of Family and Protective Services (DFPS).

No comments were received regarding the adoption of this rule.

This amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Com-

mission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

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

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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## SUBCHAPTER J. DRIVER RESPONSIBILITY PROGRAM

### 37 TAC §15.167, §15.168

The Texas Department of Public Safety (the department) adopts new §15.167 and §15.168, concerning Driver Responsibility Program. These rules are adopted without changes to the proposed text as published in the June 30, 2017 issue of the *Texas Register* (42 TexReg 3354) and will not be republished.

These rules are necessary to inform the public of changes to the Driver Responsibility Program (DRP) and the requirements for persons eligible to obtain this surcharge reduction authorized by Texas Transportation Code, §708.103(c) and §708.104(b-1).

No comments were received regarding the adoption of these rules.

These new rules are adopted 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, §708.103(c) and §708.104(b-1).

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

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## PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

### CHAPTER 151. GENERAL PROVISIONS

#### 37 TAC §151.8

The Texas Board of Criminal Justice adopts amendments to §151.8, concerning Advisory Committees, without changes to the proposed text as published in the July 21, 2017, issue of the *Texas Register* (42 TexReg 3624).

The adopted amendments are necessary to update formatting.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §§492.006, 492.013, 493.003, 510.011 - .014, and Chapter 2110; Texas Health & Safety Code §614.002, and §614.009.

Cross Reference to Statutes: None.

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

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Sharon Howell

General Counsel

Texas Department of Criminal Justice

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## CHAPTER 152. CORRECTIONAL INSTITUTIONS DIVISION

### SUBCHAPTER D. OTHER RULES

#### 37 TAC §152.51

The Texas Board of Criminal Justice adopts amendments to §152.51, concerning Authorized Witnesses to the Execution of an Offender Sentenced to Death, without changes to the proposed text as published in the July 21, 2017, issue of the *Texas Register* (42 TexReg 3624).

The adopted amendments are necessary to update formatting.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.013; Texas Code of Criminal Procedure art. 43.20.

Cross Reference to Statutes: None.

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

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Sharon Howell

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#### 37 TAC §152.61

The Texas Board of Criminal Justice adopts amendments to §152.61, concerning Emergency Response to Law Enforcement Agencies or Departments and Non-Agent Private Prisons or Jails, without changes to the proposed text as published in the July 21, 2017, issue of the *Texas Register* (42 TexReg 3626).

The adopted amendments are necessary to update formatting. No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.013, §494.008.

Cross Reference to Statutes: None.

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

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## CHAPTER 159. SPECIAL PROGRAMS

### 37 TAC §159.1

The Texas Board of Criminal Justice adopts amendments to §159.1, concerning Substance Abuse Felony Punishment

Facilities (SAFPF) Eligibility Criteria, without changes to the proposed text as published in the July 21, 2017, issue of the *Texas Register* (42 TexReg 3627).

The adopted amendments are necessary to clarify that offenders with United States Immigration and Customs Enforcement (ICE) detainees are not eligible to participate in substance abuse felony punishment facilities and to update formatting.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.013 and §493.009 and Texas Code of Criminal Procedure art. 42A.303.

Cross Reference to Statutes: None.

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

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