

# PROPOSED RULES

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

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

## TITLE 1. ADMINISTRATION

### PART 2. TEXAS ETHICS COMMISSION

#### CHAPTER 12. SWORN COMPLAINTS

##### SUBCHAPTER A. GENERAL PROVISIONS AND PROCEDURES

###### 1 TAC §12.36

The Texas Ethics Commission (the Commission) proposes new Texas Ethics Commission Rule §12.36, clarifying the facts that the Commission will consider when assessing a civil penalty in the sworn complaint (enforcement) process.

Section 571.173 of the Government Code authorizes the Commission to impose a civil penalty of not more than \$5,000 or triple the amount at issue under a law administered and enforced by the Commission, whichever amount is more, for a delay in complying with a Commission order or for a violation of a law administered and enforced by the Commission. Section 571.177 of the Government Code lists the factors that the Commission shall consider when assessing a civil penalty, including the seriousness and circumstances of a violation, the history of previous violations, the violator's good faith, and "other matters that justice may require." The list of factors provides the Commission with significant discretion in imposing a civil penalty.

Proposed §12.36 would clarify that the factors identified in §571.177, Government Code, include whether a respondent timely responds to written questions or subpoenas in the enforcement process. This serves to notify a respondent that responses to discovery requests and subpoenas can be weighed by the Commission when determining the amount of a civil penalty.

Additionally, current Commission Rule §18.27 states that the Commission may consider the fine amounts set out in Title 1, Chapter 18 when assessing a fine in the sworn complaint process. The Commission intends to adopt in Title 1, Chapter 12 a new rule, §12.36, which would include a slightly revised §18.27. Chapter 12 is a more appropriate location containing other rules related to sworn complaints. Subsection (b) of §18.27 states that the Commission is not required to waive a fine when a respondent corrects a report, but the Commission may consider it a mitigating factor. That subsection would be amended slightly to state that filing a late report or making a corrective action could also be considered mitigating factors when assessing a fine.

Seana Willing, Executive Director, has determined that for the first five-year period the proposed new rule is in effect there will

be no fiscal implications for state or local government as a result of enforcing or administering the proposed new rule.

Ms. Willing has also determined that for each year of the first five years the proposed new rule is in effect the public benefit will be clarity in what factors the Commission may consider when assessing a civil penalty during the sworn complaint process. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed new rule.

The Texas Ethics Commission invites comments on the proposed new rule from any member of the public. A written statement should be emailed to [public\\_comment@ethics.state.tx.us](mailto:public_comment@ethics.state.tx.us), or mailed or delivered to Seana Willing, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the Commission concerning the proposed new rule may do so at any Commission meeting during the agenda item relating to the proposed new rule. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Texas Ethics Commission's website at [www.ethics.state.tx.us](http://www.ethics.state.tx.us).

The new rule §12.36 is proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Chapter 571 of the Government Code.

The proposed new rule §12.36 affects Subchapters E and F of Chapter 571 of the Government Code.

###### §12.36. Assessment of Civil Penalty.

(a) The commission shall consider the factors listed in §571.177 of the Government Code when assessing a civil penalty against a respondent, including whether the respondent timely responds to written questions or subpoenas.

(b) The commission may consider the fine amounts established by chapter 18 of this title in determining the amount of a fine to be assessed in a sworn complaint proceeding.

(c) The commission is not required to waive the fine for a respondent who files a late or corrected report or makes a corrective action, but may consider the report or action to be a mitigating factor in determining the amount of any fine.

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

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Seana Willing  
Executive Director  
Texas Ethics Commission  
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For further information, please call: (512) 463-5800



### 1 TAC §12.37

The Texas Ethics Commission (the Commission) proposes new Texas Ethics Commission Rule §12.37, regarding dismissal of a complaint after public disclosure by a complainant.

Section 571.140 of the Government Code imposes a broad confidentiality on sworn complaints filed with the Commission and any information regarding complaint proceedings, including whether a complaint has actually been filed. The law provides criminal penalties for disclosure, but the Commission has stated in advisory opinions that, as required by the First Amendment of the United States Constitution, the law cannot prohibit a complainant or respondent from disclosing the fact that a complaint has been filed or from disclosing the resolution of the complaint. However, the dismissal of a complaint does not raise similar First Amendment concerns because a complainant is not a party to a complaint and a dismissal of a complaint is not a sanction, penalty, or enforcement action taken against a complainant.

The proposed new rule would further the Legislature's intent in enacting a broad confidentiality statute by authorizing the Commission to dismiss a sworn complaint, with prejudice, filed by a complainant who publicly discloses confidential information regarding the complaint. The new rule would not prohibit another individual from filing the same complaint or prohibit the Commission from voting to initiate a preliminary review of the same matter.

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

Ms. Willing has also determined that for each year of the first five years the proposed new rule is in effect the public benefit will be clarity and fairness in the sworn complaint process, including a clear incentive to complainants to maintain the confidentiality of sworn complaints pending before the Commission. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed new rule.

The Texas Ethics Commission invites comments on the proposed new rule from any member of the public. A written statement should be emailed to [public\\_comment@ethics.state.tx.us](mailto:public_comment@ethics.state.tx.us), or mailed or delivered to Seana Willing, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the Commission concerning the proposed new rule may do so at any Commission meeting during the agenda item relating to the proposed new rule. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Texas Ethics Commission's website at [www.ethics.state.tx.us](http://www.ethics.state.tx.us).

The new rule §12.37 is proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Chapter 571 of the Government Code.

The proposed new rule §12.37 affects Subchapter E of Chapter 571 of the Government Code.

#### §12.37. Dismissal of Complaint After Public Disclosure.

If a complainant publicly discloses confidential information about a sworn complaint filed or to be filed by the complainant, the commission may dismiss the complaint with prejudice as to the complainant.

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

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## SUBCHAPTER C. INVESTIGATION AND PRELIMINARY REVIEW

### 1 TAC §12.85

The Texas Ethics Commission (the commission) proposes an amendment to Texas Ethics Commission Rule §12.85, which sets procedures for preliminary review hearings.

Section 571.125 of the Government Code requires a preliminary review hearing if the Commission and a respondent cannot agree to the disposition of a complaint after a preliminary review, or if the respondent requests a hearing in writing. Rule §12.85 states that the executive director and respondent may present relevant evidence at a preliminary review hearing. The proposed amendment would change the rule to state that Commission staff may present such evidence as the executive director assists the Commission during hearings. The rule would also be amended to clarify that staff and a respondent may present an opening and closing statement at a preliminary review hearing.

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

Ms. Willing has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will be clarity and fairness in the procedures for preliminary review hearings. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

The Texas Ethics Commission invites comments on the proposed amendment from any member of the public. A written statement should be emailed to [public\\_comment@ethics.state.tx.us](mailto:public_comment@ethics.state.tx.us), or mailed or delivered to Seana Willing, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed amendment may do so at any commission meeting during the agenda item relating to the proposed amendment. Information concerning the date, time, and location of commission meetings is available by telephoning

(512) 463-5800 or on the Texas Ethics Commission's website at [www.ethics.state.tx.us](http://www.ethics.state.tx.us).

The amendment to §12.85 is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Chapter 571 of the Government Code.

The proposed amendment to §12.85 affects Subchapter E of Chapter 571 of the Government Code.

*§12.85. Preliminary Review Hearing.*

(a) Commission staff [~~The executive director~~] and the respondent may present any relevant evidence at a preliminary review hearing, including examination and cross-examination of witnesses.

(b) Commission staff and the respondent may present an opening and closing statement at a preliminary review hearing.

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

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**1 TAC §12.87**

The Texas Ethics Commission (the commission) proposes an amendment to Texas Ethics Commission Rules §12.87, which sets procedures for preliminary review hearings.

Section 571.125 of the Government Code requires a preliminary review hearing if the Commission and a respondent cannot agree to the disposition of a complaint after a preliminary review, or if the respondent requests a hearing in writing. Section 571.1244 requires the Commission to adopt procedures for the conduct of preliminary review hearings. Ethics Commission Rules §12.87 would be amended to codify the process after the Commission determines there is credible evidence of a violation following a preliminary review hearing.

The rule also clarifies that the Commission's authority to agree to the settlement of a complaint is not limited by the rule. This allows the Commission to send revised proposed orders to a respondent or reach an agreement with a respondent at any time.

Currently, §12.87 requires a complaint to be dismissed if the Commission does not "issue a decision under section 571.126 of the Government Code" within 180 days after a preliminary review hearing. The amendment would simply require dismissal if no formal hearing is ordered within 180 days after a preliminary review hearing concludes. The executive director could also extend that deadline under existing rules.

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

Ms. Willing has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will

be clarity and fairness in the procedures for preliminary review hearings. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

The Texas Ethics Commission invites comments on the proposed amendment from any member of the public. A written statement should be emailed to [public\\_comment@ethics.state.tx.us](mailto:public_comment@ethics.state.tx.us), or mailed or delivered to Seana Willing, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the Commission concerning the proposed amendment may do so at any Commission meeting during the agenda item relating to the proposed amendment. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or on the Texas Ethics Commission's website at [www.ethics.state.tx.us](http://www.ethics.state.tx.us).

The amendment to §12.87 is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Chapter 571 of the Government Code.

The proposed amendment to §12.87 affects Subchapter E of Chapter 571 of the Government Code.

*§12.87. Resolution of Preliminary Review Hearing.*

(a) At the conclusion of a preliminary review hearing in which the commission finds credible evidence of a violation:

(1) commission staff shall send to the respondent a proposed resolution within 10 days; and

(2) not later than 30 days after the respondent receives the proposed resolution, or by a later date determined by the commission, commission staff must receive from the respondent:

(A) the proposed resolution signed by the respondent;

(B) a written counter offer; or

(C) a written request that the matter be set for a formal hearing.

(b) If the respondent does not comply with subsection (a)(2) of this section, commission staff may request that the commission order a formal hearing.

(c) Commission staff shall report to the commission any written counter offer, staff's recommendation to accept or reject a counter offer, if any, or any written request that a matter be set for a formal hearing received from the respondent under subsection (a)(2) of this section.

(d) After a written counter offer or a written request that a matter be set for a formal hearing is reported to the commission, the commission by record vote of at least six commissioners shall:

(1) accept the respondent's counter offer, if any; or

(2) determine the complaint cannot be resolved and settled and order a formal hearing.

(e) The executive director shall dismiss a complaint if the commission does not order a formal hearing [~~fails to issue a decision under section 571.126 of the Government Code~~] within 180 days after the conclusion of a preliminary review hearing.

(f) This section may not be construed as limiting the commission's authority to agree to the settlement of a complaint under section 571.121 of the Government Code, including sending a revised proposed resolution to a respondent.

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

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Seana Willing

Executive Director

Texas Ethics Commission

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## CHAPTER 18. GENERAL RULES CONCERNING REPORTS

### 1 TAC §18.27

The Texas Ethics Commission (the Commission) proposes the repeal of Texas Ethics Commission Rule §18.27, which will be incorporated into a new rule clarifying the facts that the Commission will consider when assessing a civil penalty in the sworn complaint (enforcement) process.

Section 571.177 of the Government Code lists the factors that the Commission shall consider when assessing a civil penalty in the sworn complaint process. Current Commission Rule §18.27 states that the Commission may consider the fine amounts set out in Title 1, Chapter 18 when assessing a fine in the sworn complaint process. The Commission intends to adopt in Title 1, Chapter 12 a new rule, §12.36, which would include a slightly revised §18.27. Chapter 12 is a more appropriate location containing other rules related to sworn complaints.

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

Ms. Willing has also determined that for each year of the first five years the proposed repeal is in effect the public benefit will be clarity in what factors the Commission may consider when assessing a civil penalty during the sworn complaint process. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

The Texas Ethics Commission invites comments on the proposed repeal from any member of the public. A written statement should be emailed to [public\\_comment@ethics.state.tx.us](mailto:public_comment@ethics.state.tx.us), or mailed or delivered to Seana Willing, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the Commission concerning the proposed repeal may do so at any Commission meeting during the agenda item relating to the proposed repeal. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Texas Ethics Commission's website at [www.ethics.state.tx.us](http://www.ethics.state.tx.us).

The repeal of §18.27 is proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Chapter 571 of the Government Code.

The repeal of §18.27 affects Subchapters E and F of Chapter 571 of the Government Code.

### §18.27. Sworn Complaints.

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

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Seana Willing

Executive Director

Texas Ethics Commission

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## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 18. ORGANIC STANDARDS AND CERTIFICATION

The Texas Department of Agriculture (the Department) proposes the repeal of Title 4, Part 1, Chapter 18, Subchapter D, §18.300, pertaining to Adoption by Reference; Subchapter E, §18.400, pertaining to Adoption by Reference; Subchapter F, Division 2, §18.662, pertaining to Noncompliance Procedure for Certified Operations; Subchapter F, Division 3, §18.671 and §18.672, pertaining to Exclusion from Organic Sale, and Emergency Pest Disease or Treatment, respectively; and Subchapter F, Division 5, §18.704 and §18.706, pertaining to Transitional Certificates, and Transactional Certification Requirements and Logo, respectively. Additionally, the Department proposes amendments to Subchapter F, Division 3, §18.670, pertaining to Adoption by Reference; and Subchapter F, Division 5, §18.702, pertaining to Fee Schedule. The Department proposes new Subchapter D, §18.300, pertaining to Transitional Certification Requirements; new Subchapter E, §18.400, pertaining to Transfer of Certification; Subchapter F, Division 2, §18.662, pertaining to Noncompliance Procedure for Transitional Operations; and Subchapter F, Division 3, §18.671, pertaining to Unannounced Inspections.

The proposed changes are made to update regulations necessary for the operation of the organic and transitional certification programs, including compliance and inspection procedures. The changes also remove references to state or Federal regulations which are obsolete or conflict with current rule. The fee schedule is simplified for clarification and presentation in a more concise manner.

New §18.300, Subchapter D, defines land that is eligible to be certified as transitional by the Department. New §18.400, Subchapter E, is added to provide that organic certifications issued by the Department are non-transferable.

TDA is required to comply with 7 CFR Part 205 when issuing corrective action against organic operations. Subchapter F, Division 2, §18.662 is repealed and adopted as new. The proposed amendments to current §18.662 set forth notification standards and penalties in the event of non-compliance. The revisions are

made to establish uniform procedures for corrective action as a result of noncompliance with the provisions of Chapter 18 of the Administrative Code.

The amendments to §18.670 are proposed to adopt federal organic certification regulations by reference. New §18.671 removes conflicting state requirements to decrease confusion for organic businesses operating in Texas and residents of Texas who consume agricultural products that have an organic claim. Procedures are introduced in §18.671 to ensure full disclosure and understanding of protocols for unannounced inspections of organic and transitional operations.

Fees set forth in §18.702 are authorized by §18.006 of the Texas Agriculture Code, which requires the Department to recover the costs of administering the organic certification program. The proposed amendments to §18.702 do not increase the current program fees, but clarify charges by organizing them in a more concise manner to be inclusive of current and future trade partners, domestically or internationally. The changes permit the public and the industry to easily determine costs for trade certificates and documents.

The repeal of §18.704 is proposed to eliminate unnecessary language within the Chapter as the current content can easily be dispersed to the public through guidance and policy documentation.

Ms. Mary Ellen Holliman, Coordinator for the Organic Certification Program, has determined that for the first five-year period the proposed new rules and amendments are in effect, there will be no fiscal impact for state government. There is no fiscal impact for local governments.

Ms. Holliman has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the proposed amendments will be increased compliance and auditability among certified organic operations. The proposed amendments and new rules will not have a fiscal impact on applicants or operations certified by the Department as no fees have been raised.

Comments on the proposal may be submitted to Mary Ellen Holliman, Coordinator for Organic Certification Program, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments may be submitted by email at: [Organic@TexasAgriculture.gov](mailto:Organic@TexasAgriculture.gov). Comments must be received no later than 30 days from the date of publication of this proposal in the *Texas Register*.

## SUBCHAPTER D. LABELS, LABELING, AND MARKET INFORMATION

### 4 TAC §18.300

The repeal is proposed pursuant to §18.002 of the Texas Agriculture Code (the Code), which provides the Department with the authority to adopt rules for the certification of organic products; §18.006 of the Code, which requires the Department to set fees for the organic certification program in amounts that enable recovery of the costs of administering the program; and §12.016 of the Code, which provides the Department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

*§18.300. Adoption by Reference.*

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

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### 4 TAC §18.300

The new rule is proposed pursuant to §18.002 of the Texas Agriculture Code (the Code), which provides the Department with the authority to adopt rules for the certification of organic products; §18.006 of the Code, which requires the Department to set fees for the organic certification program in amounts that enable recovery of the costs of administering the program; and §12.016 of the Code, which provides the Department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

*§18.300. Transitional Certification Requirements.*

(a) Land that meets the requirements of 7 Code of Federal Regulations Part 205, §205.202(a) and (c) may be certified as transitional.

(b) Crops planted and harvested from transitional land after the last application of a prohibited substance or excluded method (as established in 7 CFR Part 205, §205.105) may be labeled as Certified Transitional.

(c) Crops harvested from land that has been certified transitional by the department may be sold, labeled, or otherwise represented as being "Certified transitional by the Texas Department of Agriculture". The operation shall not use, nor make any reference to, the word "organic" on the certified transitional product.

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

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## SUBCHAPTER E. CERTIFICATION

### 4 TAC §18.400

The repeal is proposed pursuant to §18.002 of the Texas Agriculture Code (the Code), which provides the Department with the authority to adopt rules for the certification of organic products;

§18.006 of the Code, which requires the Department to set fees for the organic certification program in amounts that enable recovery of the costs of administering the program; and §12.016 of the Code, which provides the Department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

*§18.400. Adoption by Reference.*

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

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**4 TAC §18.400**

The new rule is proposed pursuant to §18.002 of the Texas Agriculture Code (the Code), which provides the Department with the authority to adopt rules for the certification of organic products; §18.006 of the Code, which requires the Department to set fees for the organic certification program in amounts that enable recovery of the costs of administering the program; and §12.016 of the Code, which provides the Department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

*§18.400. Transfer of Certification.*

Any certification issued under this chapter is not transferable.

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

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**SUBCHAPTER F. ADMINISTRATIVE  
DIVISION 2. COMPLIANCE**

**4 TAC §18.662**

The repeal is proposed pursuant to §18.002 of the Texas Agriculture Code (the Code), which provides the Department with the

authority to adopt rules for the certification of organic products; §18.006 of the Code, which requires the Department to set fees for the organic certification program in amounts that enable recovery of the costs of administering the program; and §12.016 of the Code, which provides the Department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

*§18.662. Noncompliance Procedure for Certified Operations.*

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

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**4 TAC §18.662**

The new rule is proposed pursuant to §18.002 of the Texas Agriculture Code (the Code), which provides the Department with the authority to adopt rules for the certification of organic products; §18.006 of the Code, which requires the Department to set fees for the organic certification program in amounts that enable recovery of the costs of administering the program; and §12.016 of the Code, which provides the Department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

*§18.662. Noncompliance Procedure for Transitional Operations.*

(a) Notification. When an inspection, review, or investigation of a certified transitional operation or an operation in transitional application status reveals any noncompliance with regulations in this chapter, a written notification of noncompliance shall be sent to the operation. Such notification shall provide:

(1) a description of each noncompliance;

(2) the facts upon which the notification of noncompliance is based; and

(3) the date by which the certified operation must rebut or correct each noncompliance and submit supporting documentation of each such correction when correction is possible.

(b) Resolution. When an operation demonstrates that each noncompliance has been resolved, the department shall send the operation a written notification of noncompliance resolution.

(c) Denial of application for transitional certification. When rebuttal is unsuccessful or correction of the noncompliance is not completed within the prescribed time period, the department shall send the applicant a written notification of denial of transitional certification of the entire operation or a portion of the operation, as applicable to the noncompliance.

(d) Suspension. If a certified transitional operation fails to correct the noncompliance or to resolve the issue through rebuttal, the department shall send the operation a written notification of suspension.

(e) Eligibility. A certified operation or a person responsibly connected with an operation whose transitional certification was previously suspended will be eligible to apply for transitional certification at any time but must provide documentation as evidence that all areas of noncompliance with 7 CFR Part 205 and the rules in this part have been resolved.

(f) Violations of this Chapter. Any operation that:

(1) knowingly sells or labels a product as being certified organic or certified transitional by the department, except in accordance with this chapter, shall be subject to a civil penalty not more than the amount specified in §18.009 of the Texas Agriculture Code.

(2) makes a false statement under this chapter to a certifying agent shall be subject to the provisions of the Texas Agriculture Code, §18.008.

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

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### DIVISION 3. INSPECTION AND TESTING, REPORTING, AND EXCLUSION FROM SALE

#### 4 TAC §18.670, §18.671

The new rule and amendment are proposed pursuant to §18.002 of the Texas Agriculture Code (the Code), which provides the Department with the authority to adopt rules for the certification of organic products; §18.006 of the Code, which requires the Department to set fees for the organic certification program in amounts that enable recovery of the costs of administering the program; and §12.016 of the Code, which provides the Department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

*§18.670. Adoption by Reference.*

The Texas Department of Agriculture hereby adopts by reference 7 Code of Federal Regulations, Part 205, Subpart G, Administrative, §§205.670 - 205.672 [~~§205.670~~].

*§18.671. Unannounced Inspections.*

All currently certified operations and all operations in application status for certification are subject to unannounced inspections. TDA will conduct unannounced inspections pursuant to 7 CFR Part 205, §205.403 and §205.670.

(1) Operations will not incur a fee when selected by TDA for an unannounced inspection. However, if an operation expressly

requests an unannounced inspection in addition to their annual routine inspection, a re-inspection fee will be incurred by the operation and the only stipulation that can be made by the certified operation is selection of a 20 day time period in which the inspection will occur.

(2) An unannounced inspection will not include prior notification of the inspector's arrival. However, certain conditions, including but not limited to distance of travel by the TDA inspector, frequency of personnel at operation, and biosecurity issues, which may make it impossible to conduct an unannounced inspection of the operation without prior notification. In such cases, a TDA employee may contact the operation up to 4 hours prior to arriving onsite to ensure that appropriate representatives are present.

(3) The TDA inspector shall disclose to the operation the reason that the operation was chosen for the unannounced inspection prior to the start of the inspection.

(4) Criteria for conducting a risk-based unannounced inspection may include, but are not limited to:

(A) Random selection by the TDA;

(B) Previously identified and/or outstanding noncompliance issues;

(C) Investigations and/or responding to complaints;

(D) Organic and non-organic production or handling, to include visually indistinguishable varieties or processed products;

(E) Risk of an organic product coming into contact with a prohibited substance applied to adjoining land use;

(F) Risk of an organic product or ingredient coming into contact with a prohibited substance or commingling with a nonorganic product during handling; and

(G) Complexity of operation;

(5) Unannounced inspections may fulfill the requirements for annual on-site monitoring inspections of certified organic operations, required by 7 CFR Part 205, §205.403, only if the inspector is able to conduct a full inspection of the operation as required by that section.

(6) Unannounced inspections may be limited in scope, depth, and breadth, and may cover only certain aspects of the operation, such as fields/units/parcels, facilities, products, handling activities, etc.

(7) Inspectors may conduct sampling pursuant to §18.670 of this chapter and 7 CFR Part 205, §205.670 during an unannounced inspection. Operations will not incur a fee for any samples collected by a TDA Organic Inspector unless the collection of one or more samples is expressly requested by the operation.

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

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Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

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

◆ ◆ ◆  
**4 TAC §18.671, §18.672**

The repeal is proposed pursuant to §18.002 of the Texas Agriculture Code (the Code), which provides the Department with the authority to adopt rules for the certification of organic products; §18.006 of the Code, which requires the Department to set fees for the organic certification program in amounts that enable recovery of the costs of administering the program; and §12.016 of the Code, which provides the Department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

§18.671. *Exclusion from Organic Sale.*

§18.672. *Emergency Pest or Disease Treatment.*

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

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◆ ◆ ◆  
**DIVISION 5. MISCELLANEOUS PROVISIONS**

**4 TAC §18.702**

The amendment is proposed pursuant to §18.002 of the Texas Agriculture Code (the Code), which provides the Department with the authority to adopt rules for the certification of organic products; §18.006 of the Code, which requires the Department to set fees for the organic certification program in amounts that enable recovery of the costs of administering the program; and §12.016 of the Code, which provides the Department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

§18.702. *Fee Schedule.*

(a) The categories of fees that may be incurred by an operation applying for initial certification or annual update of certification are as follows: new application fee, certification fees, administrative fees, and additional service fees:

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

(4) Additional Service fees. The following fees are incurred at the time the service is requested and are cumulative. The purpose of the following service fees is to facilitate trade and satisfy document requirements by another certifying agent, organic operation, transitional operation, [state] or a foreign government [country].

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

(C) Review of an operation's organic system plan for compliance with a trade agreement [the equivalency agreement] be-

tween the United States Department of Agriculture National Organic Program and a foreign trade partner [the Canadian Organic Regime (COR)]: \$75.

(D) Trade documents: \$50 per document requested.  
[Review of an operation's organic system plan for compliance with the equivalency agreement between the United States Department of Agriculture National Organic Program and the European Community (EU): \$75.]

(E) Transaction certificate: \$100 per certificate.  
[Issuance of an attestation notice for compliance with the equivalency agreement between the United States Department of Agriculture National Organic Program and the Canadian Organic Regime (COR): \$50.]

~~[(F) Completion of Certificate of Inspection (COI) for compliance with the equivalency agreement between the United States Department of Agriculture National Organic Program and the European Community (EU): \$50.]~~

~~[(G) Transaction certificate: \$100 per certificate.]~~

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

(d) Scheduled date of annual update.

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

(5) If the department finds that the due date for annual update of certification occurs during or immediately preceding a period of 3 months or more where no harvestable crop will be in production or when no organic product will be handled, the department may assign, at its discretion, a due date for annual certification renewal from one of the following dates:

(A) January 31 of each year.

(B) March 31 of each year.

(C) May 31 of each year.

(D) June 31 of each year.

(E) July 31 of each year.

(F) October 31 of each year.

(e) (No change.)

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

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◆ ◆ ◆  
**4 TAC §18.704, §18.706**

The repeal is proposed pursuant to §18.002 of the Texas Agriculture Code (the Code), which provides the Department with the authority to adopt rules for the certification of organic products; §18.006 of the Code, which requires the Department to set fees for the organic certification program in amounts that enable re-

covery of the costs of administering the program; and §12.016 of the Code, which provides the Department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

§18.704. *Transaction Certificates.*

§18.706. *Transitional Certification Requirements and Logo.*

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

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## TITLE 16. ECONOMIC REGULATION

### PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

#### CHAPTER 33. LICENSING

##### SUBCHAPTER A. APPLICATION PROCEDURES

###### 16 TAC §33.5

The Texas Alcoholic Beverage Commission proposes amendments to §33.5, relating to Food and Beverage Certificate.

House Bill No. 2101, 85th Regular Session of the Texas Legislature amended Alcoholic Beverage Code (Code) §§25.13, 28.18, 32.23 and 69.16 to provide more uniform treatment of food and beverage certificates regardless of their associated primary permit or license.

For purposes of rule §33.5, one of the significant changes was to eliminate the requirement that the permit or license holder was responsible for food preparation. For some permits or licenses, the premises formerly had to be primarily a food service establishment. Under the Code as amended, food has to be available at the location (the designated physical address of the permitted or licensed premises), but the food need not be provided by the permit or license holder. And although permanent food service facilities are required, the location need not be primarily a food service establishment. The proposed amendments to rule §33.5 are intended to conform the rule to the new Code requirements. In addition, stylistic and grammatical changes are made throughout.

In addition to amending the rule to reflect the recent legislative changes, the commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for the rule continues to exist but that the proposed changes to the current rule are appropriate.

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

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

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the rule will accurately reflect the applicable provisions of the Alcoholic Beverage Code.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280, or by email to [rules@tabc.texas.gov](mailto:rules@tabc.texas.gov). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, October 26, 2017, at 1:30 p.m. in the commission meeting room on the first floor of the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

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

The proposed amendments affect Alcoholic Beverage Code §§5.31, 25.13, 28.18, 32.23, and 69.16, and Government Code §2001.039.

§33.5. *Food and Beverage Certificate.*

(a) This rule relates to §§25.13, 28.18, 32.23 and 69.16 of the Texas Alcoholic Beverage Code.

(b) Each applicant for an original or renewal food and beverage certificate shall include all information required by the commission to insure compliance with all applicable statutes and rules [and regulations of the agency].

(c) Application for the certificate shall be upon forms prescribed by the commission.

(d) The biennial certificate fee for each location is \$200.00 and must be submitted in the form of a cashier's check, U.S. postal money order, or company check made payable to the Texas Alcoholic Beverage Commission. A [The original] certificate expires [will expire] upon expiration or cancellation of the primary permit or license. No prorated certificate fees will be given and no refunds made for issuance of the food and beverage certificate for less than two years.

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

(1) Food service--cooking or assembling of food on the location [premise] primarily for [on-premise] consumption at the location. Commercially pre-packaged items purchased off of the location [off-premise] which require no cooking or assembly do not constitute food service under this section.

(2) entrée--main dish or course of a meal.

[(3) Multiple entrées--at least eight different entrées per meal period must be available to customers.]

(3) ~~[(4)]~~ Food service facilities--a designated permanent portion of the licensed location, including commercial cooking equipment, [premises] where food is stored and prepared primarily for [on-premise] consumption at the location.

(4) ~~[(5)]~~ Premise--the designated area at a location that is licensed by the commission for the sale, service or delivery of alcoholic beverages [premise].

(5) ~~[(6)]~~ Location--the designated physical address of a premise, but also including all areas at that address where the permit or license holder may sell, serve or deliver alcoholic beverages for immediate consumption at the address, regardless of whether some of those areas are occupied by other businesses, as long as those businesses are contiguous [licensed premise].

(f) An applicant is qualified for a food and beverage certificate if the following conditions, in addition to other requirements, are satisfied:

(1) multiple entrées are available to customers; and

(2) permanent food service facilities are maintained at the location. [on the premises;]

~~[(3) with respect to retail dealer's on-premise licenses and wine and beer retailer's permits, the primary business on the premises is food service, as determined in accordance with subsection (q); and]~~

~~[(4) with respect to mixed beverage permits and private club registration permits, the applicant maintains food service on the premise.]~~

(g) The hours of operation for sale and service of food and of alcoholic beverages are the same except that food may be sold or served before or after the legal hours for sale of alcoholic beverages.

~~[(h) An applicant may present evidence to the executive director or the executive director's designee which demonstrates substantial compliance with subsections (f)(1) and (g). Approval may be granted when the executive director or the executive director's designee is satisfied that the operation is a food service establishment.]~~

(h) ~~[(i)]~~ If the applicant is a hotel that maintains separate area restaurants, lounges or bars, food service facilities must exist for each of the designated licensed premises.

(i) ~~[(j)]~~ An applicant for an original food and beverage certificate shall furnish the following, as well as any other information requested by the commission to ensure compliance:

(1) the menu or, if no menu is available, a listing of the food and beverage items;

(2) hours of operation of food service and hours of operation for sale or service of alcoholic beverages;

(3) sales data (including complimentary drinks, as recorded pursuant to subsection (n)(3)) or, if not available, a projection of sales. The sales data or projection of sales [or data] should include sufficient breakdown of revenues of food, alcoholic beverages and other major sales categories at the location;

(4) listing of commercial cooking equipment used in the preparation and service of food; and

(5) copies of floor plans of the location [licensed premises] indicating the licensed premise and permanent areas devoted primarily to the preparation and service of food.

(j) ~~[(k)]~~ Applicants for renewal of food and beverage certificates [whose primary permits are a wine and beer retailer's permit or a retail dealer's on-premise license] shall submit sales data described

in subsection (n) [(o)]. The commission may request additional information or documentation to indicate that [the business at] the licensed location has permanent [is a food service establishment with] food service facilities for the preparation and service of multiple entrées.

(k) ~~[(4)]~~ The commission may review the operation at the location [licensed premises] to determine that [the applicant or holder of the food and beverage certificate has or is maintaining] food service with food service facilities for the preparation and service of multiple entrées is maintained. In doing so the commission may review such items as required in the original or renewal application as well as advertising, promotional items, changes in operations or hours, changes in floor plans, prominence of food items on the menu as compared to alcoholic beverages, name of the businesses at the location [business], number of transactions with food components, copies of city or county permits or certificates relating to the type of business operation, and any other item deemed necessary or applicable.

(l) ~~[(m)]~~ Failure to provide documentation requested or accurately maintain required records is prima facie evidence of non-compliance.

(m) ~~[(n)]~~ In verifying that [the certificate holder is maintaining] food service is being maintained at the location [as the primary business on the premises], the commission may examine all books, papers, records, documents, supplies and equipment of the certificate holder.

(n) ~~[(o)]~~ The following recordkeeping requirements apply to certificate holders [who hold a wine and beer retailer's permit, including railway cars and excursion boats, or a retail dealer's on-premise license]:

(1) records must be maintained to reflect separate totals for alcoholic beverage sales or service, food sales and other major sales categories at the location;

(2) purchase invoices must be maintained to reflect the total purchases of alcoholic beverages, food and other major purchase categories at the location;

(3) complimentary alcoholic beverages must be recorded and included in the total alcoholic beverage sales as if they were sold and clearly marked as being complimentary; and

(4) all records must be maintained for four years and made available to authorized representatives of the commission upon reasonable request.

(o) ~~[(p)]~~ In considering alcoholic beverage sales [for holders of mixed beverage permits, private club registration permits, private club exemption certificate permits and private club beer and wine permits], the dollar value of complimentary drinks shall be added to total sales or service of alcoholic beverages in determining the percentage of alcoholic beverage sales or service on the licensed premises.

(p) ~~[(q)]~~ In determining the permanent food service facilities requirement [primary business of retail dealer's on-premise licenses and wine and beer retailer's permits] under subsection (f)(2) [(3)], the gross receipts of all business entities sharing the location [premise] (as identified in the original or a supplemental application) will be considered. For audit purposes, it shall be the responsibility of the food and beverage certificate holder to provide financial and accounting records related to food, [and] alcohol, and other major sales categories of all business entities sharing the location. For audit purposes, if such information that is provided is deemed insufficient to determine if a permit or license holder qualifies for issuance of a food and beverage certificate at the location, the computation and determination of the percentage of alcohol sales or service fees to total gross receipts at the

licensed location may be based upon any available records or information. [licensed premise.]

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

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Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

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



## CHAPTER 45. MARKETING PRACTICES SUBCHAPTER C. STANDARDS OF IDENTITY FOR MALT BEVERAGES

### 16 TAC §45.71

The Texas Alcoholic Beverage Commission proposes amendments to §45.71, relating to Definitions.

House Bill No. 2299, 85th Regular Session of the Texas Legislature amended Alcoholic Beverage Code §101.67 regarding testing of malt beverages to verify alcohol content. Prior to the House Bill No. 2299 amendments, such testing had to be conducted by an independent, reputable laboratory or by the commission. The amendments deleted the reference to the reputation of independent laboratories, and added another category of laboratories eligible to verify alcohol content, i.e., laboratories certified by the U.S. Alcohol and Tobacco Trade Bureau as qualified for the analysis of beer for export.

The proposed amendments to rule §45.71 would conform the rule to Alcoholic Beverage Code §101.67 by deleting the reference to reputation in the definition of an independent laboratory, and by adding a definition of qualified laboratory.

In addition to amending the rule to reflect the recent legislative change, the commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for the rule continues to exist but that the proposed changes to the current rule are appropriate.

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

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

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the rule will accurately reflect the applicable provision of the Alcoholic Beverage Code.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alco-

holic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280, or by email to [rules@tabc.texas.gov](mailto:rules@tabc.texas.gov). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, October 26, 2017, at 1:30 p.m. in the commission meeting room on the first floor of the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

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

The proposed amendments affect Alcoholic Beverage Code §§5.31 and 101.67, and Government Code §2001.039.

#### *§45.71. Definitions.*

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

(1) Beer--A malt beverage containing one half of one percent or more of alcohol by volume and not more than 4.0% of alcohol by weight.

(2) Bottler--Any person who places malt beverages in containers.

(3) Brand label--The label carrying, in the usual distinctive design, the brand names of the malt beverage.

(4) Container--Any can, bottle, barrel, keg, or other closed receptacle, irrespective of size or of the material from which made, for use for the sale of malt beverages at retail. This provision does not in any way relax or modify §1.04(18) of the Alcoholic Beverage Code.

(5) Domestic malt beverages--A malt beverage manufactured in the United States.

(6) Gallon--United States gallon of 231 cubic inches of malt beverages at 39.2 degrees Fahrenheit (4 degrees Celsius). All other liquid measures used are subdivisions or multiples of the gallon as so defined.

(7) Independent laboratory--A laboratory that which has a good reputation in the industry and is not affiliated with the Texas Alcoholic Beverage Commission or with any entity regulated by the Texas Alcoholic Beverage Commission.

(8) Malt beverage--A beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human consumption.

(9) Malt liquor--Any malt beverage containing more than 4.0% of alcohol by weight. In this subchapter, "malt liquor and "ale" have the same meaning.

(10) Qualified laboratory--A laboratory referenced in Alcoholic Beverage Code §101.67(a)(1)(B) that is equipped to perform all analyses required by the United States Alcohol and Tobacco Tax and Trade Bureau (TTB), or its successor agency, for beer to be certified for export and employs an individual who is certified by TTB to perform or supervise those required analyses.

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

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## 16 TAC §45.85

The Texas Alcoholic Beverage Commission proposes amendments to §45.85, relating to Approval of Labels.

House Bill No. 2299, 85th Regular Session of the Texas Legislature amended Alcoholic Beverage Code §101.67, regarding testing of malt beverages to verify alcohol content. Prior to the House Bill No. 2299 amendments, such testing had to be conducted by an independent, reputable laboratory or by the commission. The amendments deleted the reference to the reputation of independent laboratories, and added another category of laboratories eligible to verify alcohol content, i.e., laboratories certified by the U.S. Alcohol and Tobacco Trade Bureau as qualified for the analysis of beer for export.

The proposed amendments to rule §45.85 would conform the rule to Alcoholic Beverage Code §101.67 by adding test results from qualified laboratories to those of independent laboratories which may be submitted in lieu of submitting a product sample in connection with an application for the approval of a label for a malt beverage.

In addition to amending the rule to reflect the recent legislative change, the commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for the rule continues to exist but that the proposed changes to the current rule are appropriate.

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

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

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the rule will accurately reflect the applicable provision of the Alcoholic Beverage Code.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280, or by email to [rules@tabc.texas.gov](mailto:rules@tabc.texas.gov). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, October 26, 2017, at 1:30 p.m. in the commission meeting room on the first floor of the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

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

The proposed amendments affect Alcoholic Beverage Code §5.31 and §101.67, and Government Code §2001.039.

### §45.85. *Approval of Labels.*

(a) No beer, ale or malt liquor may be shipped into the state, imported into the state, manufactured and offered for sale in the state, or distributed, sold or stored in the state until a sample of the beverage has been analyzed and the label approved by the commission.

(b) An applicant for label approval under this section must hold a brewer's or non-resident brewer's permit, a manufacturer's or non-resident manufacturer's license, or a brewpub license issued by the commission.

(c) An applicant must submit to the commission an application on the form prescribed by the commission and a \$25 application fee for each size requested on the application. The application must be accompanied by:

(1) a legible copy of the certificate of label approval issued by the United States Department of the Treasury; and

(2) an actual label that is affixed to the product as shipped, sold, or marketed, or an exact color copy of the label.

(d) A sample of the beverage must be submitted to the commission for analysis to verify alcohol content. A product analysis provided by an independent laboratory or a qualified laboratory may be submitted in lieu of the actual sample. If an application is for a label revision, a sample of the beverage must be submitted to the commission for analysis to verify alcohol content if the analysis on file is older than 5 years. A product analysis provided by an independent laboratory or a qualified laboratory may be submitted in lieu of the actual sample if the analysis on file is older than 5 years.

(e) *Permissible Label Revisions.* An application for label approval is a permissible revision or amendment if it includes only the changes described in paragraphs (1) - (9). All mandatory label information must be legible and appear on a contrasting background. Any changes made under this section must not violate this subchapter of the Alcoholic Beverage Code, and must conform to the general requirements specified by this subchapter. Any changes in spelling must not change the meaning of the previously approved label

(1) Add or delete any non-mandatory label information, including text, illustrations, graphics, and ingredients.

(2) Reposition any label information, including text, illustrations, and graphics.

(3) Change the color of the background or text, the shape, or the proportionate size of labels.

(4) Change the type size or font or make appropriate changes to the spelling (including punctuation marks and abbreviations) of words.

(5) Change to the type of container or net contents statement.

(6) Add, delete, or change optional information referencing awards, medals or a rating or recognition provided by an organization

as long as the rating or recognition reflects simply the opinion of the organization and does not make a specific substantive claim about the product or its competitors.

(7) Add, delete, or change holiday or seasonal-themed graphics, artwork, or salutations.

(8) Add, delete, or change promotional sponsorship-themed graphics, logos, artwork, dates, event locations or other sponsorship-related information.

(9) Add, delete or change references to a year or date.

(f) This section implements Alcoholic Beverage Code §101.41 and §101.67, pursuant to the requirements of Alcoholic Beverage Code §5.38 and the authority of Alcoholic Beverage Code §5.31.

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

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Texas Alcoholic Beverage Commission

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## PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

### CHAPTER 85. VEHICLE STORAGE FACILITIES

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 85, §§85.201, 85.204, 85.206, 85.450, 85.451, 85.650, 85.703, 85.704, 85.722, 85.800 and 85.1003; and proposes the repeal of §§85.205 and §85.452, regarding the Vehicle Storage Facilities program.

The Texas Legislature enacted Senate Bill 1501, Senate Bill 2065, House Bill 1247 and House Bill 2615, 85th Legislature, Regular Session (2017). Collectively these bills remove fencing requirements; eliminate dual licensure and associated fees; eliminate periodic and risk-based inspections and associated fees; relax certain signage requirements; as well as clarify required notices and databases; and update the advisory board composition. The proposed amendments and repeals are necessary to implement the legislative changes.

The Towing and Storage Advisory Board met on September 22, 2017, to review a draft of these proposed rules and recommended publishing in the *Texas Register*.

The proposed amendments to §85.201 remove fencing requirements in the licensure process.

The proposed amendments to §85.204 eliminate dual licensure and allow a person to work at a VSF if they have meet one of 4 criteria.

The proposed repeal of §85.205 eliminates dual licensure requirements.

The proposed amendments to §85.206 eliminate dual licensure.

The proposed amendments to §85.450 remove risk based inspections from general inspection rules.

The proposed amendments to §85.451 remove periodic inspections.

The proposed repeal of §85.452 removes language relating to risk based inspections.

The proposed amendments to §85.650 change the composition of the advisory board.

The proposed amendments to §85.703 relate to notice requirements and databases that must be used to find vehicle owners, lien holders, etc.

The proposed amendments to §85.704 relate to the second notice requirement.

The proposed amendments to §85.722 clean up the language to bring it in line with other rules.

The proposed amendments to §85.800 eliminates fees related to dual licensure and risk-based inspections.

The proposed amendments to §85.1003 relax some of the signage requirements.

Brian E. Francis, Executive Director, has determined that for the first five-year period the proposed rules are in effect, the effect on state costs and revenue is as follows:

The elimination of providing fence height in §85.201 will not affect state costs and revenue. A Vehicle Storage Facility (VSF) is still required to have a fence, but the applicant does not need to include the dimensions of the fence as part of the application process.

There is no effect on local government costs and revenue.

The elimination of dual licensure in §§85.204 - 85.206 will not affect state costs and revenue. An anticipated decrease in revenue will occur in the TOW Program while the VSF Program remains unaffected.

There is no effect on local government costs and revenue.

The elimination of risk-based and periodic inspections in §§85.450 - 85.452 will not affect state costs and revenue. No risk-based inspections have ever been performed, or charged for, in the VSF Program.

There is no effect on local government costs and revenue.

The composition of the Advisory Board in §85.650; the relaxing of signage requirements in §85.1003; and the elimination of fees related to dual licensure and risk-based inspections in §85.800 will not affect state costs and revenue.

There is also no effect on local government costs and revenue.

Notice requirements and mandated use of particular databases to find vehicle owners and lien holders in §85.703 and §85.704, as well as the clean-up of rules relating to storage fees and other charges in §85.722 will not likely affect state or local costs and revenue.

There may be less revenue for local or state governmental entities if a VSF uses an authorized private entity to obtain information related to a vehicle owner or operator and if the private entity charges less than the governmental entity would have for the same service. However, there may not be any actual loss

if the authorized private entity charges an amount equal to or above the government entity. In that instance, there is no financial incentive to use a private entity.

Mr. Francis also has determined that for each year of the first five-year period the proposed rules are in effect, there is no direct benefit to the public. The proposed rules relate to the internal operation of licensed VSFs and the Advisory Board only. These rules do not present a direct benefit or loss to the public.

Mr. Francis has determined that for each year of the first five-year period the proposed rules are in effect, there is no impact on small and micro-business or rural communities.

Proposed rules §85.703 and §85.704 may have an unknown fiscal impact on VSFs who do not timely send notices to vehicle owners and operators. VSFs in violation of the notice requirements will lose daily storage fee revenues until such time as a late notice is sent. However, loss of daily storage fee revenues can be minimized or entirely avoided by a VSFs timely compliance with notice requirements.

Additionally, the elimination of notice provided by VSFs to law enforcement in instances of abandoned vehicles may save VSFs a \$10 notification fee per vehicle. However, it is noted that law enforcement agencies do not accept or actively enforce the payment of the fee. Therefore, an accurate assessment of how much money VSFs may save, if any, is unknown.

Since the agency has determined that the rule will have no adverse economic effect on small or micro businesses preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

Texas Government Code §2001.0045 requires state agencies to determine if a proposed rule has a fiscal impact that imposes a cost on regulated persons, including another state agency, a special district, or a local government.

Mr. Francis has determined that none of the proposed rules will impose costs on regulated persons, including another state agency, a special district, or a local government.

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032, or electronically to [erule.comments@tdlr.texas.gov](mailto:erule.comments@tdlr.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

**16 TAC §§85.201, 85.204, 85.206, 85.450, 85.451, 85.650, 85.703, 85.704, 85.722, 85.800, 85.1003**

The amendments are proposed under Texas Occupations Code, Chapters 51 and 2303, 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 proposal are those set forth in Texas Occupations Code, Chapters 51 and 2303. No other statutes, articles, or codes are affected by the proposal.

*§85.201. License Requirements--Vehicle Storage Facility License.*

To be eligible for a VSF license, an applicant must:

- (1) - (9) (No change.)
- (10) state the VSF's storage capacity;

~~[(11) state the height of any fence enclosing the VSF and the date it was installed;]~~

~~(11) [(12)] include a statement indicating whether the facility has an all weather surface, signs posted in the proper locations, and lighting, as required by these rules; and~~

~~(12) [(13)] adopt the model drug testing policy provided in these rules or file an alternate drug testing policy for approval under these rules.~~

*§85.204. License Requirements--Vehicle Storage Facility Employee License.*

(a) To be eligible for a VSF employee license, an applicant must:

- (1) submit a completed application on a department-approved form;
- (2) pay the fee required under §85.800;
- (3) successfully pass a criminal background check; and
- (4) if the applicant for renewal has within the preceding 12-month period tested positive for drugs under §85.725, the applicant must submit a negative drug test to the department.

(b) A person may not work at a VSF unless the individual holds: ~~[a license issued under this chapter. A VSF may not employ a person unless the person holds a license issued by the department.]~~

- ~~(1) a license issued under this chapter;~~
- ~~(2) an incident management towing operator's license under §2308.153;~~
- ~~(3) a private property towing operator's license under §2308.154; or~~
- ~~(4) a consent towing operator's license under §2308.155.~~

~~(c) A VSF may not employ a person to work at the VSF unless the person holds a license issued under this chapter or under Chapter 86.~~

~~(d) [(e)] For purposes of this chapter, persons operating or managing a VSF as a sole proprietor or other unincorporated business organization are employees of the VSF and required to obtain a VSF employee license or otherwise be licensed under this chapter or under Chapter 86.~~

*§85.206. License Requirements--Vehicle Storage Facility Employee License Renewal[; Dual Vehicle Storage Facility Employee and Towing Operator License].*

(a) To renew a VSF employee license ~~[or dual VSF employee and towing operator license,]~~ an applicant must:

- (1) submit a completed application on a department-approved form;
- (2) pay the applicable fee required under §85.800;
- (3) successfully pass a criminal background check; and
- (4) if the applicant for renewal has within the preceding 12-month period tested positive for drugs under §85.725, the applicant must submit a negative drug test to the department.

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

*§85.450. Inspections--General.*

(a) All VSFs shall be inspected periodically~~]; according to a risk-based schedule,]~~ or as a result of a complaint. These inspections

will be performed to determine compliance with the requirements of the Act and these rules. In addition, the department may make information available to VSF owners and managers on best practices for risk-reduction techniques.

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

§85.451. *Periodic Inspections.*

(a) - (d) (No change.)

~~{(e) Based on the results of the periodic inspection, a VSF may be moved to a risk-based schedule of inspections. The department will notify the owner of the VSF, in writing, if the facility becomes subject to the risk-based inspection schedule and the scheduled frequency of inspection.}~~

§85.650. *Towing and Storage and Boating Advisory Board.*

(a) The advisory board consists of the ~~nine~~ ~~{ten}~~ members appointed by the chairman of the commission with the approval of the commission. The ~~nine~~ ~~{ten}~~ members include:

(1) one representative of a towing company operating in a county with a population of less than one-million;

(2) one representative of a towing company operating in a county with a population of one-million or more;

(3) one ~~representative~~ ~~{owner}~~ of a vehicle storage facility located in a county with a population of less than one-million;

(4) one ~~representative~~ ~~{owner}~~ of a vehicle storage facility located in a county with a population of one-million or more;

(5) one ~~peace~~ ~~{law enforcement}~~ officer from a county with a population of less than one-million;

(6) one ~~peace~~ ~~{law enforcement}~~ officer from a county with a population of one-million or more;

(7) one parking facility ~~representative~~ ~~{owner}~~;

(8) one representative of a member insurer, as defined by §462.004, Insurance Code, of the Texas Property and Casualty Insurance Guaranty Association who writes ~~{property and casualty insurers who write}~~ automobile insurance in this state; and

(9) one person who operates both a towing company and a vehicle storage facility. ~~{one member of a boating company; and}~~

~~{(10) one public member.}~~

(b) - (g) (No change.)

§85.703. *Responsibilities of Licensee--Notice to Vehicle Owner or Lienholder.*

(a) ~~{Applicability.}~~ If a vehicle is removed by the vehicle owner or authorized representative within 24 hours after the VSF receives the vehicle, notification as described in subsections (b) - (j) ~~{(i)}~~ does not apply.

(b) ~~The registered~~ ~~{Notification to owners of registered vehicles. Registered}~~ owners and lien holders of a vehicle accepted at a VSF ~~{towed vehicles}~~ shall be notified in the following manner.

(1) ~~If~~ ~~{Vehicles registered in Texas. After accepting for storage}~~ a vehicle is registered in Texas, the VSF shall notify the vehicle's current registered owner and primary lien holder by certified mail, return receipt requested, registered, or electronic certified mail, within five days, but in no event sooner than within 24 hours of receipt of the vehicle.

(2) ~~If~~ ~~{Vehicles not registered in Texas. After accepting for storage}~~ a vehicle is not registered in Texas, the VSF shall notify the vehicle's ~~{current}~~ registered owner and all recorded lien holders within

14 days, but ~~{in}~~ ~~{no}~~ ~~{event}~~ sooner than within 24 hours of receipt of the vehicle.

~~(c) The operator of a VSF shall send the notice required by subsection (b)(1) and (2) to an address obtained by mail or electronically from:~~

~~(1) The governmental entity responsible for maintaining the motor vehicle title and registration database for the state in which the vehicle is registered or~~

~~(2) A private entity authorized by the governmental entity to obtain title, registration, and lienholder information using a single vehicle identification number search obtained through a secure access portal to the government entity's motor vehicle records.~~

~~{(e) It is a defense to an action initiated by the department for violation of this section that the facility has attempted unsuccessfully and in writing or electronically to obtain information from the governmental entity with which the vehicle is registered by requesting the names and addresses of registered owners and lien holders based on the license plate number and vehicle identification number.}~~

~~(d) {Date of notification.} Notification has {will be considered to have} occurred when the United States Postal Service places its postmark on the return receipt and is {to be} timely {filed} if:~~

~~(1) the postmark indicates that the notice was mailed within the period described by subsection (a) or (b); or~~

~~(2) the notice was published as provided for by subsection (f) {(e)}.~~

~~(e) If a VSF sends a notice required under this section after the time mandated by subsection (b)(1) or (2):~~

~~(1) The deadline for sending any subsequent notice is based on the date that notice was actually sent to the vehicle owner and any lien holders;~~

~~(2) A VSF may not charge the daily storage fee permissible under Tex. Occ. Code §2303.155(b)(3) until 24 hours after it has sent the notice required under this section.~~

~~(f) {(e)} {Notice by publication.} Notice required under this section {to the registered owner and the primary lienholder of a vehicle towed to a VSF} may be completed {provided} by publication in a newspaper of general circulation in the county in which the vehicle is stored if:~~

~~(1) the vehicle is registered in another state;~~

~~(2) the VSF {operator of the storage facility} submits to the governmental entity that is responsible for maintaining the motor vehicle title and registration database for the state in which the vehicle is registered, or to a private entity that is authorized by the governmental entity to access title, registration, or lienholder information, {with which the vehicle is registered} a written or electronic request for information relating to the identity of the registered owner and any lienholder of record.~~

~~(3) If mailed, such requests shall be correctly addressed, with sufficient postage, and sent by certified mail, or electronic certified mail, return receipt requested, to the governmental entity with which the vehicle is registered requesting information relating to the identity of the last known registered owner and any lienholder of record.~~

~~(4) {(3)} the identity of the registered owner cannot be determined;~~

~~(5) {(4)} the registration does not contain an address for the registered owner; or~~

(6) [(5)] the operator of the storage facility cannot reasonably determine the identity and address of each lienholder.

(g) [(f)] Notice by publication is not required if each notice sent in accordance with this section [subsection (b)] is returned because:

(1) the notice was unclaimed or refused; or

(2) the person to whom the notice was sent moved without leaving a forwarding address.

(h) [(g)] Only one notice is required to be published for an abandoned nuisance vehicle.

(i) [(h)] [Form of notifications.] All mailed notifications must be correctly addressed; mailed with sufficient postage; and sent by certified mail, return receipt requested, registered, or electronic certified mail.

(1) All mailed notifications shall state:

(A) the full licensed name of the VSF where the motor vehicle is located, its street address and telephone number, and the hours the vehicle can be released to the vehicle owner;

(B) the daily storage rate, the type and amount of all other charges assessed, and the statement, "Total storage charges cannot be computed until vehicle is claimed. The storage charge will accrue daily until vehicle is released";

(C) the first date for which a storage fee is assessed;

(D) the date the vehicle will be transferred from the VSF and the address to which the vehicle will be transferred if the operator will be transferring a vehicle to a second lot because the vehicle has not been claimed within a certain time;

(E) the date the vehicle was accepted for storage and from where, when, and by whom the vehicle was towed;

(F) the VSF license number preceded by the words "Texas Department of Licensing and Regulation Vehicle Storage Facility License Number" or "TDLR VSF Lic. No.";

(G) a notice of the towed vehicle owner's right under the Texas Occupations Code, Chapter 2308, to challenge the legality of the tow involved; and

(H) the name, mailing address, and toll-free telephone number of the department for purposes of directing questions or complaints.

(2) All published notifications shall state:

(A) the full name, street address, telephone number, and VSF license number [of the VSF], and the Department's internet address;

(B) a description of the vehicle; and

(C) the total amount of charges assessed against the vehicle.

(3) Notices published in a newspaper may contain information for more than one towed vehicle.

(j) [(i)] If authorized, a notification fee may not be charged unless actual notice has been given as required under this section. [the notification is actually sent or performed before the vehicle is released.] §85.704. Responsibilities of licensee--Second Notice; Consent to Sale.

[(a)] If a vehicle is not claimed by a person permitted to claim the vehicle or is not taken into custody by a law enforcement agency

under Chapter 683, Transportation Code, before the 15th day after the date notice is mailed or published under §85.703, the operator of the VSF shall send a second notice to the registered owner and the primary lienholder of the vehicle.]

(a) [(b)] If a vehicle is not claimed by a person permitted to claim the vehicle before the 10th day after the date notice is mailed or published under §85.703, the operator of the VSF shall consider the vehicle to be abandoned and, if required by the law enforcement agency with jurisdiction where the vehicle is located, must report the [send notice of] abandonment to the [a] law enforcement agency. If the law enforcement agency notifies the VSF that the agency will send notices and dispose of the abandoned vehicle under Subchapter B, Chapter 683, Transportation Code, the VSF shall pay the fee required under §683.031, Transportation Code.

(b) If the vehicle is not claimed, the second notice shall be sent no earlier than the 15th day, and no later than the 21st day, after the date the first notice is mailed or published under §85.703. The operator of a VSF shall send a second notice to the registered owner and each recorded lienholder of the vehicle if the facility:

(1) was not required to make a report under subsection (a); or

(2) has made a required report under subsection (a) and the law enforcement agency:

(A) has notified the facility that the law enforcement agency will take custody of the vehicle;

(B) has not taken custody of the vehicle; or

(C) has not responded to the report.

(c) If the VSF sends a second notice after the 21st day on which the first notice was mailed or published, it may not charge a daily storage fee authorized under §85.722(d) until 24 hours after the second notice is mailed or published.

(d) [(e)] Notice under this section must include:

(1) the information listed in §85.703(h)(1)(A) - (H);

(2) a statement of the right of the facility to dispose of the vehicle under subsections (a) and (b);

(3) a statement that the failure of the owner or lienholder to claim the vehicle and personal property before the 30th day after the date the notice is provided is:

(A) a waiver by that person of all right, title, or interest in the vehicle and personal property; and

(B) a consent to the sale of the vehicle at a public sale.

(e) [(d)] Notwithstanding subsection (a) [(b)], if publication is required for notice under this section, the notice must include:

(1) the information listed in §85.703(h)(2); and

(2) a statement that the failure of the owner or lienholder to claim the vehicle before the date of the sale is:

(A) a waiver of all right, title, and interest in the vehicle;

(B) and a consent to the sale of the vehicle at a public sale.

(f) [(e)] The operator shall pay any excess proceeds to the person entitled to those proceeds.

§85.722. Responsibilities of Licensee--Storage Fees and Other Charges.

(a) For the purposes of this section, "VSF [operator]" includes a garage, parking lot, or other facility that is:

- (1) owned by a governmental entity; and
  - (2) used to store or park at least 10 vehicles each year.
- (b) (No change.)
- (c) Notification fee.

(1) A VSF may not charge a vehicle owner or authorized representative more than \$50 for notification under these rules. If a notification must be published, and the actual cost of publication exceeds 50% of the notification fee, the VSF [operator] may recover the additional amount of the cost of publication. The publication fee is in addition to the notification fee.

(2) If a vehicle is removed by the vehicle owner or authorized representative within 24 hours after the date the VSF receives the vehicle, notification is not required by these rules.

(3) If a vehicle is removed by the vehicle owner or authorized representative before notification is sent or within 24 hours from the time VSF receives the vehicle, the VSF [operator] may not charge a notification fee to the vehicle owner.

(d) Daily storage fee. A VSF [operator] may not charge less than \$5.00 or more than \$20 for each day or part of a day for storage of a vehicle that is 25 feet or less in length. A VSF [operator] shall charge a fee of \$35 for each day or part of a day for storage of a vehicle that exceeds 25 feet in length.

(1) A daily storage fee may be charged for any part of the day, except that a daily storage fee may not be charged for more than one day if the vehicle remains at the VSF less than 12 hours. In this paragraph a day is considered to begin and end at midnight.

(2) A VSF that has accepted into storage a vehicle registered in this state shall not charge for more than five days of storage fees until a notice, as prescribed in §85.703 of these rules, is mailed or published.

(3) A VSF [operator] that has accepted into storage a vehicle not registered in Texas shall not charge for more than five days of storage before the date the request for owner information is sent to the appropriate governmental entity or to the private entity authorized by that governmental entity to obtain title, registration, and lienholder information using a single vehicle identification number inquiry. [~~Such requests shall be correctly addressed, with sufficient postage, and sent by certified mail, or electronic certified mail, return receipt requested, to the governmental entity with which the vehicle is registered requesting information relating to the identity of the last known registered owner and any lienholder of record.~~]

(4) A VSF [operator] shall charge a daily storage fee after notice, as prescribed in §85.703, is mailed or published for each day or portion of a day the vehicle is in storage until the vehicle is removed and all accrued charges are paid.

(e) Impoundment fee. A VSF [operator] may charge a vehicle owner or authorized representative an impoundment [Impoundment] fee not to exceed \$20. [~~if Impoundment is performed in accordance with these rules. The Impoundment fee may not exceed \$20.~~] If the VSF [operator] charges a fee for impoundment [Impoundment], the written bill for services must specify the exact services performed for that fee and the dates those services were performed.

(f) Governmental or law enforcement fees. A VSF [operator] may collect from a vehicle owner or authorized representative any fee

that must be paid to a law enforcement agency, the agency's authorized agent, or a governmental entity.

(g) Environmental hazard fee. A VSF [operator] may collect from a vehicle owner or authorized representative a fee in an amount set by the commission for the remediation, recovery, or capture of an environmental or biological hazard.

(h) Additional fees. A VSF [operator] may not charge additional fees related to the storage of a vehicle other than fees authorized by these rules or a nonconsent-towing fee authorized by Texas Occupations Code, §2308.2065.

§85.800. Fees.

(a) Application fees.

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

[(3) Dual Vehicle Storage Facility and Tow Operator License]

[(A) Original Application--\$150]

[(B) Expedited Dual License--\$75]

[(C) Renewal--\$150]

(b) (No change.)

[(e) Risk-based Inspections--\$150]

(c) [(d)] Late renewals fees for licenses under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(d) [(e)] All fees are nonrefundable [~~except as provided for by commission rules or statute~~].

§85.1003. Technical Requirements--Storage Lot Signs.

(a) Facility information. All VSFs shall have a clearly visible and readable sign located at the [its] main entrance. The [Such] sign shall have letters at least 2 inches in height, with a contrasting background, [shall] be readable [visible] at 10 feet, and [shall] contain the following information:

(1) the registered name of the storage lot, as it appears on the VSF license;

(2) street address;

(3) the telephone number for the owner to contact in order to obtain release of the vehicle;

(4) the facility's hours, within one hour of which vehicles will be released to vehicle owners; and

(5) the storage lot's state license number preceded by the phrase "VSF License Number."

(b) (No change.)

(c) Nonconsent towing fees schedule. All VSFs shall [~~conspicuously~~] place a clearly visible and readable sign where payment to the VSF is made[; at the place of payment,] which states [in 1-inch letters that]:

(1) "Nonconsent tow fees schedules available on request." The VSF shall provide a copy of a nonconsent towing fees schedule on request; and

(2) The nonconsent towing fees provided for viewing and to the vehicle owner or representative must match the nonconsent towing fees authorized by this chapter or Texas Occupations Code §2308.2065.

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

[(g) A vehicle storage facility accepting a nonconsent towed vehicle shall post a sign in one inch letters stating "Nonconsent tow fee schedules available on request." The vehicle storage facility shall provide a copy of a nonconsent towing fee schedules on request.]

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

Filed with the Office of the Secretary of State on October 2, 2017.

TRD-201703973

Brian E. Francis

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: November 12, 2017

For further information, please call: (512) 463-3306



## 16 TAC §§85.205, §85.452

The repeals are proposed under Texas Occupations Code, Chapters 51 and 2303, 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 proposal are those set forth in Texas Occupations Code, Chapters 51 and 2303. No other statutes, articles, or codes are affected by the proposal.

§85.205. *Licensing Requirements--Dual Vehicle Storage Facility Employee and Towing Operator License.*

§85.452. *Risk-based Inspections.*

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

Filed with the Office of the Secretary of State on October 2, 2017.

TRD-201703974

Brian E. Francis

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: November 12, 2017

For further information, please call: (512) 463-3306



## CHAPTER 86. VEHICLE TOWING AND BOOTING

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 86, §§86.10, 86.450, 86.451, 86.650, 86.705 and 86.800; and proposes the repeal of §§86.212, 86.213, and 86.452, regarding the Vehicle Towing and Booting program.

The Texas Legislature enacted Senate Bill 1501, Senate Bill 2065, and House Bill 2615 during the 85th Legislature, Regular Session (2017). Collectively, these bills eliminate dual licensure and the towing operator training license, as well as the associated fees. They also eliminate risk-based inspections; establish guidelines for towing in an apartment complex; and update the

advisory board composition. The proposed amendments and repeals are necessary to implement the legislative changes mandated by these statutes.

The Towing and Storage Advisory Board met on September 22, 2017, to review a draft of these proposed rules and recommended publishing in the *Texas Register*.

The proposed amendments to §86.10 update the name of the advisory board, removes the definition of Property Owner's Association, and renumber the section accordingly.

The proposed repeal of §86.212 eliminates dual licensure and its associated requirements.

The proposed repeal of §86.213 eliminates the towing operator training license and its associated requirements.

The proposed amendments to §86.450 remove references to the risk-based inspection schedule.

The proposed amendments to §86.451 remove reference to risk-based inspections.

The proposed repeal of §86.452 eliminates risk-based inspections.

The proposed amendments to §86.650 update the composition of the advisory board.

The proposed amendments to §86.705 create rules relating to towing in an apartment complex for repairs or renovations to the parking facility.

The proposed amendments to §86.800 remove dual licensure and tow operator training license fees.

Brian E. Francis, Executive Director, has determined that for the first five-year period the proposed new rules are in effect, the financial impact will be as follows:

Repeal of dual licensure pursuant to §§86.212, 86.213, and 86.800 will result in a net loss to the State in revenue of \$191,350 in the first year; \$208,550 in the second year; \$227,300 in the third year; \$2476, 800 in the fourth year; and \$270,100 in the fifth year.

There is no anticipated fiscal impact on local government costs and revenue.

Repeal of risk-based inspections and associated requirements pursuant to §§86.450, 86.451, and 86.452 will have no effect on state or local government costs and revenue.

The remaining rule amendments relating to §§86.10, 86.650, and 86.705 will have no effect on state or local government costs and revenue.

Mr. Francis also has determined that for each year of the first five-year period the proposed rules are in effect, the public will benefit by the creation of rules in §86.705 relating to an apartment complex's ability to tow cars to another location within the complex's parking facility in the event that the facility requires repairs or renovations.

The public will benefit because vehicle owners and operators will no longer have to travel to an off-site Vehicle Storage Facility (VSF) to obtain vehicles towed because of repairs or renovations to the parking facility; will no longer have to pay VSF fees; will have tow fees capped at \$50; and cannot be charged for tows necessitated by emergency repairs to the parking facility.

The remaining rules have no effect on the public.

Mr. Francis has determined that for each year of the first five-year period the proposed new rules are in effect, the elimination of dual licensure in §86.212 and the tow operator training license in §86.213 will allow each operator who previously obtained a dual license to save \$50 a year on licensing fees.

He has also determined that there may be minimal costs to parking facility owners by the implementation of notice requirements to vehicle owners and operators in §86.705 and through possible off-sets to towing companies/operators who may only collect a limited tow fee directly from consumers. The tow fee is limited to an amount which cannot exceed 75 percent of the established private property tow fee for these types of tows.

Additionally, although §86.705 does not impose any costs on tow companies or operators, they could experience decreased revenue because of the above-mentioned cap on towing fees. VSFs may also see decreased revenue because they will no longer receive vehicles towed under this rule.

The effect on small and micro-business is unknown. A decrease in revenue to VSF's will depend on how many cars, if any, a VSF currently receives after tows from apartment complexes that are performed in furtherance of improvements and repairs.

Additionally, any decrease in revenue to tow companies or operators will depend on whether the tow companies or operators receive any off-sets from apartment complexes to compensate them for costs above 75 percent of the established private property tow fee. It also depends on whether there are contractual agreements between apartment complexes and tow companies/operators to tow within an apartment complex parking facility for a flat fee that does not exceed the cap.

Accordingly, although there might be some decreases in revenues to both VSFs and tow companies/operators, the decrease is speculative and an estimated dollar amount cannot be provided.

Mr. Francis has also determined that there will not be an adverse economic impact on rural communities. Rural communities do not regulate towing or vehicle storage.

Since the agency has determined that the rule will have an unknown and speculative adverse economic effect on small and micro business, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

Texas Government Code §2001.0045 requires state agencies to determine if a proposed rule has a fiscal impact that imposes a cost on regulated persons, including another state agency, a special district, or a local government.

Mr. Francis has determined that there is no cost on regulated persons, including another state agency, a special district or a local government by any of the proposed rules amendments and additions.

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032, or electronically to [erule.comments@tdlr.texas.gov](mailto:erule.comments@tdlr.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

**16 TAC §§86.10, 86.450, 86.451, 86.650, 86.705, 86.800**

The amendments are proposed under Texas Occupations Code, Chapters 51 and 2308, 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 proposal are those set forth in Texas Occupations Code, Chapters 51 and 2308. No other statutes, articles, or codes are affected by the proposal.

*§86.10. Definitions.*

The following words and terms, when used in this chapter will have the following meanings, unless the context clearly shows otherwise:

(1) Advisory board--The Towing and ~~Storage~~ ~~and Booting~~ Advisory Board.

(2) - (18) (No change.)

~~[(19) Property owners' association--Has the meaning assigned by §202.001, Property Code.]~~

(19) ~~[(20)]~~ Public roadway--A public street, alley, road, right-of-way, or other public way, including paved and unpaved portions of the right-of-way.

(20) ~~[(21)]~~ Tow truck--A motor vehicle, including a wrecker, equipped with a mechanical device used to tow, winch, or otherwise move another motor vehicle. The term does not include:

(A) a motor vehicle owned and operated by a governmental entity, including a public school district;

(B) a motor vehicle towing:

(i) a race car;

(ii) a motor vehicle for exhibition; or

(iii) an antique motor vehicle;

(C) a recreational vehicle towing another vehicle;

(D) a motor vehicle used in combination with a tow bar, tow dolly, or other mechanical device if the vehicle is not operated in the furtherance of a commercial enterprise;

(E) a motor vehicle that is controlled or operated by a farmer or rancher and used for towing a farm vehicle; or

(F) a motor vehicle that:

(i) is owned or operated by an entity the primary business of which is the rental of motor vehicles; and

(ii) only tows vehicles rented by the entity.

(21) ~~[(22)]~~ Towing company--An individual, association, corporation, or other legal entity that controls, operates, or directs the operation of one or more tow trucks over a public roadway in this state but does not include a political subdivision of the state.

(22) ~~[(23)]~~ Towing operator--The person to which the department issued a towing operator license.

(23) ~~[(24)]~~ Unauthorized vehicle--A vehicle parked, stored, or located on a parking facility without the consent of the parking facility owner.

(24) ~~[(25)]~~ Vehicle--A device in, on, or by which a person or property may be transported on a public roadway. The term includes an operable or inoperable automobile, truck, motorcycle, recreational vehicle, or trailer but does not include a device moved by human power or used exclusively on a stationary rail or track.

(25) ~~[(26)]~~ Vehicle owner--A person:

(A) named as the purchaser or transferee in the certificate of title issued for the vehicle under Chapter 501, Transportation Code;

(B) in whose name the vehicle is registered under Chapter 502, Transportation Code, or a member of the person's immediate family;

(C) who holds the vehicle through a lease agreement;

(D) who is an unrecorded lienholder entitled to possess the vehicle under the terms of a chattel mortgage; or

(E) who is a lienholder holding an affidavit of repossession and entitled to repossess the vehicle.

(26) [(27)] Vehicle storage facility--A vehicle storage facility, as defined by Texas Occupations Code, §2303.002 that is operated by a person who holds a license issued under Texas Occupations Code, Chapter 2303 to operate the facility.

§86.450. *Inspections--General.*

(a) A towing company shall be inspected periodically[; according to a risk-based schedule.]; or as a result of a complaint. These inspections are performed to determine compliance with the requirements of the Act and these rules. In addition, the department may make information available to licensees and managers on best practices for risk-reduction techniques.

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

§86.451. *Periodic Inspections.*

(a) - (d) (No change.)

[(e) Based on the results of the periodic inspection, a towing company may be moved to a risk-based schedule of inspections. The department will notify the owner of the towing company, in writing, if the company becomes subject to the risk-based inspection schedule and the scheduled frequency of inspection.]

§86.650. *Towing [;] and Storage [; and Booting] Advisory Board.*

(a) The advisory board consists of the nine [ten] members appointed by the chairman of the commission with the approval of the commission. The nine [ten] members include:

(1) one representative of a towing company operating in a county with a population of less than one-million;

(2) one representative of a towing company operating in a county with a population of one-million or more;

(3) one representative [owner] of a vehicle storage facility located in a county with a population of less than one-million;

(4) one representative [owner] of a vehicle storage facility located in a county with a population of one-million or more;

(5) one peace [law enforcement] officer from a county with a population of less than one-million;

(6) one peace [law enforcement] officer from a county with a population of one-million or more;

(7) one parking facility representative [owner];

(8) one representative of a member insurer, as defined by §462.004, Insurance Code, of the Texas Property and Casualty Insurance Guaranty Association who writes [property and casualty insurers who write] automobile insurance in this state; and

(9) one person who operates both a towing company and a vehicle storage facility. [one member of a booting company; and]

[(10) one public member.]

(b) - (g) (No change.)

§86.705. *Responsibilities of Towing Company--Standards of Conduct.*

(a) - (m) (No change.)

(n) A vehicle owner or operator may request that the vehicle be taken to another location.

(o) if a parking facility serves an apartment complex or other residential housing for which parking is restricted to residents and guests, the owner or authorized agent of the parking facility may authorize vehicles to be towed from one location on the parking facility to another location on the same parking facility under the following rules:

(1) A vehicle may only be towed from one location on a parking facility to another location on the same parking facility to permit the parking facility owner to make repairs or improvements upon the parking facility or property served by the parking facility.

(2) Prior to a vehicle being towed and relocated by a towing company under this section, the parking facility shall provide written notice to all residents that repairs or improvements are planned. The notice shall be in conformity with Texas Property Code §92.0131(d). These rules do not affect any rights or obligations created by Texas Property Code §92.0131, nor allow possession of the vehicle to be withheld or impaired.

(3) The notice shall be provided at least 10 calendar days in advance and at a minimum state:

(A) the areas of the parking facility where parking is prohibited for the duration of repairs or improvements;

(B) the date and time after which vehicles may no longer be parked in the specified areas;

(C) the date and time when the areas will be available for parking in the future, or if not known, how residents will be notified that the areas are again available for parking after completion of repairs or improvements;

(D) that vehicles will be towed without the consent of the vehicle owner or operator and at their expense, if vehicles are parked in the designated areas at any time after notice is given and work is completed;

(E) the location at the same parking facility to which the vehicle will be moved;

(F) if the vehicle is towed from the designated area after the date and time provided in the notice and prior to the areas being reopened for parking, the tow fee charged to the vehicle owner or operator shall not exceed 75 percent of the private property tow fee established under Texas Occupations Code, Section 2308.0575;

(G) a telephone number for contacting the parking facility owner or authorized agent to enable a person to recover a vehicle which has been relocated under this section.

(4) Except when repairs or improvements are immediate and unforeseeable, or as authorized by a peace officer, a vehicle may not be towed and relocated within a parking facility or on parking facility property without actual written notice to every affected resident as mandated in this section.

(5) If, due to an immediate and unforeseeable need to make repairs or improvements, it is not possible to give 10 calendar days

written notice, each affected resident shall receive written notice as soon as the need for repairs or improvements is known.

(6) The owner or operator of any authorized vehicle which is towed from one location on a parking facility to another location on the same parking facility without 10 days written notice may not be charged for the tow.

(7) The towing company and tow truck operator performing the relocation of vehicles within a parking facility are responsible for creating and maintaining a tow ticket for each vehicle relocated under this section as required by law. In addition to §86.705(g) and §86.709, the tow ticket shall state the name of the individual who authorized the vehicles relocation and the date when the parking facility or authorized agent gave notice to the owner or operator of each vehicle relocated.

(8) A peace officer is authorized to direct the relocation of a vehicle from one location within a parking facility to another location within the parking facility to further public safety.

§86.800. Fees.

(a) Application Fees

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

(3) Operator License

(A) Original Application--\$100

(B) Renewal--\$100

(C) Duplicate License--\$25

(D) Operator License Amendment--\$25

~~{(E) Training License--\$25}~~

~~{(4) Dual Vehicle Storage Facility License and Towing Operator }~~

~~{(A) Original Application--\$150 }~~

~~{(B) Expedited Dual License--\$75 }~~

~~{(C) Renewal--\$150}~~

~~{(b) Risk-based inspections--\$150}~~

(b) ~~{(e)}~~ Late renewal fees for licenses and permits issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(c) ~~{(d)}~~ All fees are nonrefundable except as provided for by commission rules or statute.

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

Filed with the Office of the Secretary of State on October 2, 2017.

TRD-201703975

Brian E. Francis

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: November 12, 2017

For further information, please call: (512) 463-3306



**16 TAC §§86.212, 86.213, 86.452**

The repeals are proposed under Texas Occupations Code, Chapters 51 and 2308, 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 proposal are those set forth in Texas Occupations Code, Chapters 51 and 2308. No other statutes, articles, or codes are affected by the proposal.

§86.212. *Licensing Requirements--Dual Vehicle Storage Facility Employee and Towing Operator License.*

§86.213. *Licensing Requirements--Towing Operator Training License.*

§86.452. *Risk-based Inspections.*

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

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Brian E. Francis

Executive Director

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-3306



**TITLE 22. EXAMINING BOARDS**

**PART 5. STATE BOARD OF DENTAL EXAMINERS**

**CHAPTER 100. GENERAL PROVISIONS**

**22 TAC §100.3**

The State Board of Dental Examiners (Board) proposes an amendment to §100.3, concerning the Board's Organization and Structure. This rule amendment will define the Board's structure to comply with changes made in SB313.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to establish Board membership in compliance with the legislature's modifications to the Dental Practice Act. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed amendment may be submitted to Tyler Vance, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register*.

The amendment is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposal.

§100.3. *Organization and Structure.*

(a) General. The board shall consist of eleven [15] members appointed by the governor with the advice and consent of the senate, as follows:

(1) six [eight] reputable dentist members who reside in this state and have been actively engaged in the practice of dentistry for at least the five years preceding appointment;

(2) three [two] reputable dental hygienist members who reside in this state and have been actively engaged in the practice of dental hygiene for at least the five years preceding appointment; and,

(3) two [five] members who represent the public.

(b) Privileges of office. Members of the board have full and identical privileges, except that only dentist members may participate in the decision to pass or fail an applicant for a license to practice dentistry during the clinical portion of the board examinations.

(c) Terms of office. Members of the board serve staggered six-year terms. The terms of one-third of the members shall expire on February 1 of each odd-numbered year. A member may not serve more than two consecutive full terms. The completion of the unexpired portion of a term does not constitute service for a full term for purposes of this subsection.

(d) Eligibility. Refer to Occupations Code §252.002.

(e) Membership and employee restrictions. Refer to Occupations Code §252.003.

(f) Compensation. Each member of the board is entitled to receive a per diem set by legislative appropriation for each day the member engages in board business, and may receive reimbursement for travel expenses in accordance with the travel policies of the state of Texas and the Board of Dental Examiners.

(g) Professional Conduct. A board member should strive to achieve and project the highest standards of professional conduct. Such standards include:

(1) A board member should avoid conflicts of interest. If a conflict of interest should unintentionally occur, the board member should recuse himself or herself from participating in any matter before the board that could be affected by the conflict.

(2) A board member should avoid the use of the board member's official position to imply professional superiority or competence.

(3) A board member should avoid the use of the board member's official position as an endorsement in any health care related matter.

(4) A board member should refrain from making any statement that implies that the board member is speaking for the board if the board has not voted on an issue or unless the board has given the board member such authority.

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

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Kelly Parker

Executive Director

State Board of Dental Examiners

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



**22 TAC §100.9**

The State Board of Dental Examiners (Board) proposes an amendment to §100.9, concerning the Advisory Committees and Workgroups Established by the Board. This proposed amendment will eliminate the Dental Hygiene Advisory Committee and the Blue Ribbon Panel on Dental Sedation/Anesthesia Safety and provide for the establishment of the Advisory Committee on Dental Anesthesia.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to eliminate the Dental Hygiene Advisory Committee and the Blue Ribbon Panel on Dental Sedation/Anesthesia Safety committees and establish the Advisory Committee on Dental Anesthesia in compliance with SB 313. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed amendment may be submitted to Tyler Vance, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register*.

The amendment is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposal.

§100.9. *Advisory Committees and Workgroups Established by the Board.*

(a) In addition to any specific statutory authority to establish particular advisory committees, the board may authorize advisory committees from outside the board's membership to advise the board on rulemaking, pursuant to §2001.031 of the Texas Government Code and subject to chapter 2110 of the Texas Government Code, State Agency Advisory Committees.

(b) Creation and dissolution. The board, in a regularly scheduled meeting, may vote to establish advisory committees and workgroups from outside the board's membership to address specific subjects, purposes, or ends. Unless continued by a vote of the board, advisory committees and workgroups outside the board's membership are abolished the sooner of one year from the date of creation or when the specific subject, purpose, or end for which the advisory committee or workgroup was established, have been served.

(c) Chair. Each advisory committee or workgroup shall select from among its members a chairperson who shall preside over the ad-

visory committee or workgroup and shall report to the board or agency as needed.

(d) Membership. The presiding officer shall determine the method by which members are designated to the advisory committee or workgroup. The membership of an advisory committee must provide a balanced representation between members of the dental industry and consumers of the dental industry. Advisory committee and workgroup members shall serve terms as determined by the board.

(e) Board member liaisons. The presiding officer may appoint board member or board members to serve as a liaison(s) to an advisory committee or workgroup and report to the board the recommendations of the advisory committee or workgroup for consideration by the board. The role of a board member liaison is limited to clarifying the board's charge and intent to the advisory committee or workgroup.

(f) Agency staff liaisons. The executive director of the agency may assign agency staff to assist the advisory committee and workgroup.

(g) Meetings and participation. All meetings shall be open to the public and noticed on the Secretary of State's website to allow the public an opportunity to participate.

(h) Purpose. The board rule establishing the advisory committee or workgroup shall state the purpose and tasks of the committee and describe the manner in which the committee will report to the board.

(i) Committee actions. The actions of advisory committees are recommendations only.

(j) The following are advisory committees and workgroups established by the board or established by statute: Advisory Committee on Dental Anesthesia, established by Subchapter E of Chapter 258 of the Texas Occupations Code.

{(1) Dental Hygiene Advisory Committee, established by Subchapter B of Chapter 262 of the Texas Occupations Code; and}

{(2) Advisory Committee- Blue Ribbon Panel on Dental Sedation/Anesthesia Safety, established by board rule 100.12.}

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

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Kelly Parker

Executive Director

State Board of Dental Examiners

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## CHAPTER 104. CONTINUING EDUCATION

### 22 TAC §104.1

The State Board of Dental Examiners (Board) proposes an amendment to §104.1, concerning continuing education requirements. This rule amendment will provide for continuing education credits for examiners for Central Regional Dental Testing Services, Inc.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be

any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated is to provide more fairness to examiners as well as more incentive to serve as an examiner. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed amendment may be submitted to Tyler Vance, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register*.

The amendment is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposal.

#### §104.1. Requirement.

As a prerequisite to the annual renewal of a dental or dental hygiene license, proof of completion of 12 hours of acceptable continuing education is required.

(1) Each licensee shall select and participate in the continuing education courses endorsed by the providers identified in §104.2 of this title (relating to Providers). A licensee, other than a licensee who resides outside of the United States, who is unable to meet education course requirements may request that alternative courses or procedures be approved by the Licensing Committee.

(A) Such requests must be in writing and submitted to and approved by the Licensing Committee prior to the expiration of the annual period for which the alternative is being requested.

(B) A licensee must provide supporting documentation detailing the reason why the continuing education requirements set forth in this section cannot be met and must submit a proposal for alternative education procedures.

(C) Acceptable causes may include unanticipated financial or medical hardships or other extraordinary circumstances that are documented.

(D) A licensee who resides outside of the United States may, without prior approval of the Licensing Committee, complete all required hours of coursework by self-study.

(i) These self-study hours must be provided by those entities cited in §104.2 of this title (relating to Providers). Examples of self-study courses include correspondence courses, video courses, audio courses, and reading courses.

(ii) Upon being audited for continuing education compliance, a licensee who submits self-study hours under this subsection must be able to demonstrate residence outside of the United States for all periods of time for which self-study hours were submitted.

(E) Should a request to the Licensing Committee be denied, the licensee must complete the requirements of this section.

(2) Effective September 1, 2008, the following conditions and restrictions shall apply to coursework submitted for renewal purposes:

(A) At least 8 hours of coursework must be either technical or scientific as related to clinical care. The terms "technical" and "scientific" as applied to continuing education shall mean that courses have significant intellectual or practical content and are designed to directly enhance the practitioner's knowledge and skill in providing clinical care to the individual patient.

(B) Up to 4 hours of coursework may be in risk-management courses. Acceptable "risk management" courses include courses in risk management, record-keeping, and ethics.

(C) Up to 6 hours of coursework may be self-study. These self-study hours must be provided by those entities cited in §104.2 of this title (relating to Providers). Examples of self-study courses include correspondence courses, video courses, audio courses, and reading courses.

(D) Hours of coursework in the standards of the Occupational Safety and Health Administration (OSHA) annual update course or in cardiopulmonary resuscitation (CPR) basic life support training may not be considered in the 12-hour requirement.

(E) Hours of coursework in practice finance may not be considered in the 12-hour requirement.

(3) Each licensee shall complete [either] the jurisprudence assessment every three (3) years. This requirement is in addition to the twelve (12) hours of continuing education required annually for the renewal of a license.

(4) A licensee may carry forward continuing education hours earned prior to a renewal period which are in excess of the 12-hour requirement and such excess hours may be applied to subsequent years' requirements. Excess hours to be carried forward must have been earned in a classroom setting and within the three years immediately preceding the renewal period. A maximum of 24 total excess credit hours may be carried forward.

(5) Examiners for the Western Regional Examining Board (WREB) and for Central Regional Dental Testing Services Inc. (CRDTS) will be allowed credit for no more than 6 hours annually, obtained from [WREB's] calibration and standardization exercises associated with the examinations [exercise].

(6) Any individual or entity may petition one of the providers listed in §104.2 of this title to offer continuing education.

(7) Providers cited in §104.2 of this title will approve individual courses and/or instructors.

(8) A consultant for the SBDE who is also a licensee of the SBDE is eligible to receive up to 6 hours of continuing education credit annually to apply towards the annual renewal continuing education requirement under this section.

(A) Continuing education credit hours shall be awarded for the issuance of an expert opinion based upon the review of SBDE cases and for providing assistance to the SBDE in the investigation and prosecution of cases involving violations of the Dental Practice Act and/or the Rules of the SBDE.

(B) The amount of continuing education credit hours to be granted for each consultant task performed shall be determined by the Executive Director, Division Director or manager that authorizes the consultant task to be performed. The award of continuing education credit shall be confirmed in writing and based upon a reasonable assessment of the time required to complete the task.

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

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Kelly Parker

Executive Director

State Board of Dental Examiners

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



## CHAPTER 107. DENTAL BOARD PROCEDURES

### SUBCHAPTER B. COMPLAINTS AND INVESTIGATIONS

#### 22 TAC §107.104

The State Board of Dental Examiners (Board) proposes an amendment to §107.104, concerning the Official Investigation of a Complaint. This amendment will modify the Board's complaint investigation process in accordance with changes made in SB 313.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to comply with changes made in SB 313. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed amendment may be submitted to Tyler Vance, Assistant General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register*.

The amendment is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposal.

#### §107.104. Official Investigation of a Complaint.

(a) Once an official investigation commences, board staff shall notify the complainant and respondent of the filing of the complaint and the commencing of the official investigation. The complainant and the respondent shall receive notice of the complaint's status, at least quarterly, until final disposition of the complaint, unless such notice would jeopardize an investigation.

(b) The official investigation of a complaint may include referral to a panel of experts for review.

(c) As of September 1, 2016, board staff shall classify each filed complaint into one or more of the following allegation categories:

(1) Standard of Care: failure to treat a patient according to the standard of care in the practice of dentistry or dental hygiene.

(2) Sanitation: failure to maintain the dental office in a sanitary condition.

(3) Dishonorable Conduct: unprofessional or dishonorable conduct, including conduct identified in §108.9 of this title (related to Dishonorable Conduct).

(4) Administrative: failure to comply with administrative requirements of the Act or board rules.

(5) Business Promotion: failure to comply with the requirements of the Act or board rules relating to advertising and referral schemes.

(6) Practicing Dentistry without a License.

(7) Non-compliance: failure to comply or timely comply with an Order or Remedial Plan issued by the board.

(d) Board staff shall assign each filed complaint a priority classification, as follows:

(1) Priority 1 includes allegations ~~that [of dental treatment causing serious patient harm, impairment, serious criminal activity, inappropriate contact with a patient, and other allegations determined by the Director of Investigations to] require an expedited investigation or consideration of temporary suspension of license or permits. [pursuant to §263.004 of the Act.]~~

(2) Priority 2 includes ~~[record-keeping violations, administrative violations, allegations of practicing dentistry without a license that do not allege serious patient harm, and other] allegations that require an expedited investigation. [do not allege serious patient harm.]~~

(3) Priority 3 includes investigations that require a standard investigation.

(4) ~~[(3)]~~ A complaint's priority classification may be changed when appropriate. ~~[following approval of the Director of Investigation or the Dental Director.]~~

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

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Kelly Parker

Executive Director

State Board of Dental Examiners

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## CHAPTER 110. SEDATION AND ANESTHESIA 22 TAC §110.7

The State Board of Dental Examiners (Board) proposes an amendment to §110.7, concerning Portability. The proposed amendment will eliminate the requirement for a portability permit and will require portable dentists to provide the physical addresses of the locations they practice at.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to gather more data on portability and to comply with the requirements of SB313. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed amendment may be submitted to Tyler Vance, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register*.

The amendment is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposal.

### §110.7. Portability.

(a) A dentist who applies for the issuance or renewal of a sedation/anesthesia permit must include in the application a statement indicating whether the dentist provides or will provide a permitted sedation/anesthesia service in more than one location and the physical address of each location at which the dentist provides or will provide permitted sedation/anesthesia services.

{(a) A sedation/anesthesia permit is valid for the dentist's facility, if any, as well as any satellite facility.}

{(b) A Texas licensed dentist who holds the Board-issued privilege of portability on or before June 1, 2011 will automatically continue to hold that privilege provided the dentist complies with the renewal requirements of this section.}

{(c) Portability of a sedation/anesthesia permit will be granted to a dentist who, after June 1, 2011, applies for portability, if the dentist:}

{(1) holds a Level 4 Deep Sedation/General Anesthesia permit;}

{(2) holds a Level 3 Moderate Parenteral Sedation permit and the permit was granted based on education received in conjunction with the completion of a oral and maxillofacial specialty education program or a dental anesthesia program; or}

{(3) holds a Level 3 Moderate Parenteral Sedation permit and if:}

{(A) the training for the permit was obtained on the basis of completion of any of the following American Dental Association (ADA) Commission on Dental Accreditation (CODA) recognized or approved programs:}

{(i) a specialty program;}

{(ii) a general practice residency;}

{(iii) an advanced education in general dentistry program; or}

~~[(iv)]~~ a continuing education program. Dentists seeking a portability privilege designation based on this method of education shall also successfully complete no less than sixty (60) hours of didactic instruction and manage no less than twenty (20) dental patients by the intravenous route of administration; and]

~~[(B)]~~ the applicant provides proof of administration of no less than thirty (30) cases of personal administration of Level 3 sedation on patients in a primary or satellite practice location within the six (6) month period preceding the application for portability, but following the issuance of the sedation permit. Acceptable documentation shall include, but not be limited to, patient records demonstrating the applicant's anesthetic technique, as well as provision of services by the applicant within the minimum standard of care.]

(b) ~~[(d)]~~ A dentist providing sedation/anesthesia services in more than one location [utilizing a portability permit] remains responsible for providing these services in strict compliance with all applicable laws and rules. The dentist shall ascertain that the location is supplied, equipped, staffed, and maintained in a condition to support provision of sedation/anesthesia services that meet the standard of care.

~~[(e)]~~ Any applicant whose request for portability status is not granted on the basis of the application will be provided an opportunity for hearing pursuant to Texas Government Code, Chapter 2001 et seq.]

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

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Kelly Parker

Executive Director

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## 22 TAC §110.8

The State Board of Dental Examiners (Board) proposes the repeal of §110.8, concerning Provisional Anesthesia and Portability Permits. This rule repeal will eliminate the provisional anesthesia and portable anesthesia permits.

Kelly Parker, Executive Director, has determined that for the first five-year period the repeal is in effect, there will not be any fiscal implications for state or local government as a result of repealing the rule.

Ms. Parker has also determined that for the first five-year period the rule is repealed, the public benefit anticipated as a result of administering this section will be to reduce the burden on Board staff and to comply with the requirements of SB313. Ms. Parker has determined that for the first five-year period the rule is repealed, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed rule repeal may be submitted to Tyler Vance, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register*.

This rule repeal is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposed rule repeal.

### *§110.8. Provisional Anesthesia and Portability Permits.*

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

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## 22 TAC §110.13

The State Board of Dental Examiners (Board) proposes new §110.13, concerning Sedation and Anesthesia checklist. This new rule will establish the requirements of a preoperative checklist for all levels of sedation/anesthesia.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to increase safety to patients receiving sedation/anesthesia. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed new rule may be submitted to Tyler Vance, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register*.

The new rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposal.

### *§110.13. Required Preoperative Checklist for Administration of Levels 1, 2, 3, and 4 Sedation/Anesthesia.*

(a) A dentist administering level 1, 2, 3, or 4 sedation/anesthesia must create and maintain in the patient's dental records required by rule §108.8, a document titled "preoperative sedation/anesthesia checklist" that is completed by the dentist prior to commencing a procedure for which the dentist will administer Level 1, 2, 3, or 4 sedation/anesthesia.

(b) A dentist delegating the administration of sedation/ anesthesia to another provider in accordance with §258.001(4) of the Act, must maintain in the patient's dental records required by rule §108.8, a document titled "preoperative sedation/anesthesia checklist" that is completed by the sedation/anesthesia provider prior to commencing a procedure for which the dentist has delegated another provider to administer the Level 1, 2, 3, or 4 sedation/anesthesia.

(c) The checklist must include, at a minimum, documentation of the following, or documentation of why the item was not recorded, for each level of sedation/anesthesia:

(1) Medical history, including documentation of the following:

- (A) review of patient medical history;
- (B) review of patient allergies;
- (C) review of patient surgical and/or anesthesia history;
- (D) review of family surgical and/or anesthesia history;

and

(E) review of patient medications and date and time last

taken

(2) Confirmation that written and verbal preoperative and post-operative instructions were delivered to the patient, parent, legal guardian, or care-giver;

(3) Medical consults, as needed;

(4) Physical examination, including documentation of the following:

- (A) Body mass index;
- (B) American Society of Anesthesiologists Physical Status Classification (ASA) classification;
- (C) NPO status; and
- (D) Preoperative vitals, including height, weight, blood pressure, pulse rate, and respiration rate;

(5) Anesthesia-specific physical examination including documentation of the following:

(A) Airway assessment, including Mallampati score and/or Brodsky score; and

(B) Auscultation;

(6) Confirmation of pre-procedure equipment readiness check;

(7) Confirmation of pre-procedure treatment review;

(8) Special preoperative considerations as indicated for sedation/anesthesia administered to pediatric or high risk patients; and

(9) Documentation of reason for omission of any item required by this subsection.

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

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## 22 TAC §110.14

The State Board of Dental Examiners (Board) proposes new §110.14, concerning Sedation and Anesthesia Emergency Preparedness. This new rule will establish the requirements of emergency preparedness policies and procedures related to sedation/anesthesia.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to increase safety in the administration of dental sedation/anesthesia. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed new rule may be submitted to Tyler Vance, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register*.

The new rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposal.

### *§110.14. Emergency Preparedness Policies and Procedures.*

(a) Pursuant to §258.1557 of the Act, a permit holder must develop written emergency preparedness policies and procedures, specific to the permit holder's practice setting, that establish a plan for the management of medical emergencies in each practice setting in which the dentist administers anesthesia.

(b) The emergency preparedness policies and procedures must include written protocols, policies, procedures, and training requirements, specific to the permit holder's equipment and drugs, for responding to emergency situations involving anesthesia, including information specific to respiratory emergencies.

(c) The permit holder must annually review the emergency preparedness policies and procedures to determine whether an update is necessary. The permit holder must maintain documentation of the dates of the emergency preparedness policies and procedures' creation, the most recent update, and the most recent annual review.

(d) Policies and procedures developed by all permit holders must include basic life support protocols, advanced cardiac life support rescue protocols, and/or pediatric advanced cardiac life support rescue protocols, consistent with the requirements of §§110.3, 110.4, 110.5 and 110.6, as applied to the permit holder.

(e) Policies and procedures developed by all permit holders must include, at a minimum, the following documents:

(1) Specific protocols for response to a sedation/anesthesia emergency, including specific protocols for response to a respiratory emergency and advanced airway management techniques;

(2) Staff training log, documenting staff training in emergency prevention, recognition, and response on at least an annual basis;

(3) Emergency drug log documenting monthly reviews for assurance of unexpired supply;

(4) Equipment readiness log indicating annual reviews for assurance of function of the equipment required by §110.15; and

(5) Individual office staff roles and responsibilities in response to an emergency, including roles and responsibilities specific to a response to a respiratory emergency.

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

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## 22 TAC §110.15

The State Board of Dental Examiners (Board) proposes new rule §110.15, concerning Sedation and Anesthesia Emergency Prevention and Response. This new rule will establish the requirements of emergency preparedness equipment and inspections related to sedation/anesthesia.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to increase safety to patients receiving sedation/anesthesia. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed new rule may be submitted to Tyler Vance, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register*.

The new rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposal.

§110.15. Sedation and Anesthesia Emergency Prevention and Response.

(a) Pursuant to §258.1556 of the Act, the Board establishes minimum emergency preparedness standards and requirements for the administration of sedation/anesthesia.

(b) At any time a permit holder administers sedation/anesthesia, the permit holder must have immediately available:

(1) an adequate and unexpired supply of drugs and anesthetic agents, including, but not limited to:

(A) pharmacologic antagonists appropriate for sedation/anesthesia drugs used;

(B) vasopressors;

(C) corticosteroids;

(D) bronchodilators;

(E) antihistamines;

(F) antihypertensives;

(G) and anticonvulsants.

(2) an automated external defibrillator, as defined by §779.001 of the Texas Health and Safety Code;

(3) a positive pressure ventilation device;

(4) supplemental oxygen; and

(5) appropriate monitors and equipment, including, but not limited to:

(A) stethoscope;

(B) sphygmomanometer or automatic blood pressure monitor;

(C) pulse oximeter;

(D) an oxygen delivery system with adequate full face masks and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system;

(E) suction equipment which permits aspiration of the oral and pharyngeal cavities and a backup suction device which will function in the event of a general power failure;

(F) a lighting system which permits evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure; and

(G) precordial/pretracheal stethoscope, size-and-shape appropriate advanced airway device, intravenous fluid administration equipment, and/or electrocardiogram, consistent with the requirements of §§110.3, 110.4, 110.5, and 110.6, as applied to the permit holder.

(c) A permit holder who is administering sedation/anesthesia for which a Level 4 permit must use capnography during the administration of the sedation/anesthesia, as required by §258.1555 of the Act.

(d) Each permit holder must conduct an emergency drug inspection for assurance of unexpired supply at least monthly. Documentation of emergency drug inspections must be maintained in the permit holder's emergency drug log, required by §110.14.

(e) Each permit holder must conduct an equipment inspection for assurance of function at least annually. Documentation of equipment inspections must be maintained in the permit holder's equipment readiness log, required by §110.14.

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

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## CHAPTER 111. STANDARDS FOR PRESCRIBING CONTROLLED SUBSTANCES AND DANGEROUS DRUGS

### 22 TAC §111.3

The State Board of Dental Examiners (Board) proposes new §111.3, concerning Prescription Monitoring by the Dentist. The proposed rule will require dentists to review a patient's prescription history prior to prescribing certain drugs.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to reduce prescription drug abuse and to comply with the requirements of the Texas Health and Safety Code. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed new rule may be submitted to Tyler Vance, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register*.

The new rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposal.

#### §111.3. Prescription Monitoring by the Dentist.

(a) Beginning September 1, 2019, in accordance with Section 481.0764 of the Texas Health and Safety Code, a dentist shall access, review, and document the dentist's review of a patient's prescription drug history report through the Texas State Board of Pharmacy's Prescription Monitoring Program (PMP) Clearinghouse prior to prescribing or dispensing opioids, benzodiazepines, barbiturates, or carisoprodol to the dental patient, on or after September 1, 2019. Failure to access, review, and document the dentist's review is grounds for investigation by the Board.

(b) The act described above in subsection (a) of this section may be performed by an employee or other agent of the dentist acting at the direction of the dentist so long as that employee or agent acts in compliance with HIPAA and the employee or agent only accesses information related to a particular patient of the dentist. The dentist is responsible for any unauthorized access by an employee or other agent.

(c) Exceptions: the act described above in subsection (a) of this section is not required if the patient has been diagnosed with cancer or is receiving hospice care and that status is clearly noted in the patient's dental record.

(d) A dentist has complied with subsection (a) of this section if the dentist makes a good faith attempt to comply with subsection (a) of this section but is unable to do so due to circumstances outside the dentist's control, and those circumstances are clearly noted in the patient's dental record.

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

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### 22 TAC §111.4

The State Board of Dental Examiners (Board) proposes new §111.4, concerning Prescription Monitoring by the Board. The proposed rule will require the Board to review dentists' prescription history.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to reduce prescription drug abuse and diversion and to comply with the requirements of the Texas Health and Safety Code. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed new rule may be submitted to Tyler Vance, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register*.

The new rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposal.

§111.4. Prescription Monitoring by the Board.

(a) The Board shall promulgate specific guidelines for dentists for the responsible prescribing of opioids, benzodiazepines, barbiturates, or carisoprodol.

(b) The Board shall periodically access a dentist's prescription information through the Texas State Board of Pharmacy's Prescription Monitoring Program to determine whether the dentist is engaging in potentially harmful prescribing patterns or practices. This determination will be based on:

(1) the number of times a dentist prescribes opioids, benzodiazepines, barbiturates, or carisoprodol; and

(2) patterns of prescribing combinations of those drugs and other dangerous combinations identified by the Texas State Board of Pharmacy.

(c) The Board shall notify a dentist if the agency discovers that the dentist may be engaging in potentially harmful prescribing patterns or practices.

(d) The Board may initiate an investigation of a dentist if the agency finds evidence during a periodic check that the dentist is engaging in conduct that violates any laws or rules related to the practice of dentistry.

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

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## CHAPTER 114. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL ASSISTANTS

### 22 TAC §114.1

The State Board of Dental Examiners (Board) proposes an amendment to §114.1, concerning the Permitted Duties of dental assistants. The proposed amendment establishes the requirements for a dental assistant to perform certain acts and will establish a deadline for scheduling a patient appointment following the interim care of a minor emergency condition.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to require training requirements for certain acts by dental assistants and to clarify the requirements associated with interim treatment of a minor emergency by a dental assistant. Ms. Parker has determined that for the first five-year period the proposed rule is in effect,

costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed amendment may be submitted to Tyler Vance, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register*.

The amendment is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposal.

### §114.1. Permitted Duties.

(a) A dentist may delegate to a dental assistant the authority to perform only acts or procedures that are reversible. An act or procedure that is reversible is capable of being reversed or corrected.

(b) A dentist may not delegate or otherwise authorize a dental assistant to perform any task for which a certificate or additional training is required under this section, unless the dental assistant holds the required certificate or has obtained the additional training.

(c) A dental assistant may perform tasks under a dentist's general or direct supervision. For the purposes of this section:

(1) "General supervision" means that the dentist employs or is in charge of the dental assistant and is responsible for supervising the services to be performed by the dental assistant. The dentist may or may not be present on the premises when the dental assistant performs the procedures.

(2) "Direct supervision" means that the dentist employs or is in charge of the dental assistant and is physically present in the office when the task is performed. Physical presence does not require that the supervising dentist be in the treatment room when the dental assistant performs the service as long as the dentist is in the dental office.

(d) The dentist shall remain responsible for any delegated act.

(e) The clinical tasks that a dental assistant can perform under general supervision are limited to:

(1) the making of dental x-rays in compliance with the Occupations Code, §265.005; and

(2) the provision of interim treatment of a minor emergency dental condition to an existing patient of the treating dentist in accordance with the Occupations Code, §265.003(a-1). For purposes of this paragraph only, "existing patient" means a patient that the supervising dentist has examined in the twelve (12) months prior to the interim treatment. A treating dentist who delegates the provision of interim treatment of a minor emergency condition to a dental assistant shall schedule a follow-up appointment with the patient within 30 days. It is not a violation if the dentist makes a good faith attempt to schedule a follow-up appointment with the patient within 30 days but is unable to because circumstances outside the dentist's control and those circumstances are clearly noted in the patient's record.

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

Filed with the Office of the Secretary of State on September 29, 2017.



## 22 TAC §114.3

The State Board of Dental Examiners (Board) proposes an amendment to §114.3, concerning Pit and Fissure Sealants. This proposed amendment will eliminate the requirement that dental assistants be certified to perform pit and fissure sealants, but will maintain the education and training requirements.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to free Board staff from having to issue pit and fissure sealant certificates, in accordance with the recommendations of the Sunset Advisory Commission. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed new rule may be submitted to Tyler Vance, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register*.

The amendment is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposal.

### §114.3. Pit and Fissure Sealant [Certificate].

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

- (1) "Didactic education" requires the presentation and instruction of theory and scientific principles.
- (2) "Clinical education" requires providing care to patient(s) under the direct supervision of a dentist or dental hygienist instructor.
- (3) "Direct Supervision" requires that the instructor responsible for the procedure shall be physically present during patient care and shall be aware of the patient's physical status and well-being.

~~(b) This subsection applies only to applications for certification received by the Board before September 1, 2009. A Texas-licensed dentist who is enrolled as a Medicaid Provider with appropriate state agencies, or who practices in an area determined to be underserved by the Department of State Health Services, may delegate the application of a pit and fissure sealant to a dental assistant, if the dental assistant:~~

~~(1) is employed by and works under the direct supervision of the licensed dentist; and]~~

~~[(2) is certified pursuant to subsection (f) of this section.]~~

~~(e) This subsection applies only to applications for certification received by the Board on or after September 1, 2009. A Texas-licensed dentist may delegate the application of pit and fissure sealant to a dental assistant, if the dental assistant is certified pursuant to subsection (f) of this section.]~~

~~(b) [(d)] In addition to application of pit and fissure sealants a dental assistant who meets the requirements [eertified] in this section may use a rubber prophylaxis cup and appropriate polishing materials to cleanse the occlusal and smooth surfaces of teeth that will be sealed or to prepare teeth for application of orthodontic bonding resins. Cleansing is intended only to prepare the teeth for the application of sealants or bonding resins and should not exceed the amount needed to do so.~~

~~(c) [(e)] The dentist may not bill for a cleansing provided hereunder as a prophylaxis.~~

~~(d) A Texas-licensed dentist may delegate the application of pit and fissure sealants to a dental assistant if the dental assist has:~~

~~(1) at least two years of experience as a dental assistant;~~

~~(2) successfully completed a current course in basic life support; and~~

~~(3) completed a minimum of 8 hours of education that includes clinical and didactic education in pit and fissure sealants taken through a CODA-accredited dental, dental hygiene, or dental assistant program approved by the Board whose course of instruction includes:~~

~~(A) infection control;~~

~~(B) cardiopulmonary resuscitation;~~

~~(C) treatment of medical emergencies;~~

~~(D) microbiology;~~

~~(E) chemistry;~~

~~(F) dental anatomy;~~

~~(G) ethics related to pit and fissure sealants;~~

~~(H) jurisprudence related to pit and fissure sealants; and~~

~~(I) the correct application of sealants, including the actual clinical application of sealants.~~

~~(e) Application of pit and fissure sealants must be in accordance with the minimum standard of care and limited to the dental assistant's scope of practice.~~

~~(f) The dental assistant must comply with the Dental Practice Act and Board Rules in the application of pit and fissure sealants. Pursuant to §258.003 of the Dental Practice Act, the delegating dentist is responsible for all dental acts delegated to a dental assistant, including application of pit and fissure sealant.~~

~~[(f) A dental assistant wishing to obtain certification under this section must:]~~

~~[(1) Pay an application fee set by board rule;]~~

~~[(2) And on a form prescribed by the Board provide proof that the applicant has:]~~

~~[(A) At least two years of experience as a dental assistant;]~~

{(B) Successfully completed a current course in basic life support; and}

{(C) Complete a minimum of 16 hours of education for certificates issued under applications received by the Board before September 1, 2009 or complete a minimum of 8 hours of education for certificates issued under applications received by the Board on or after September 1, 2009. To fulfill this requirement, the education must include clinical and didactic education in pit and fissure sealants taken through a CODA-accredited dental hygiene or dental assisting program approved by the Board whose course of instruction includes:}

- {(i) infection control;}
- {(ii) cardiopulmonary resuscitation;}
- {(iii) treatment of medical emergencies;}
- {(iv) microbiology;}
- {(v) chemistry;}
- {(vi) dental anatomy;}
- {(vii) ethics related to pit and fissure sealants;}
- {(viii) jurisprudence related to pit and fissure sealants; and}

{(ix) the correct application of sealants, including the actual clinical application of sealants.}

{(g) Before January 1 of each year, a dental assistant registered under this section who wishes to renew that registration must:}

{(1) Pay a renewal fee set by board rule; and}

{(2) Submit proof that the applicant has successfully completed a current course in basic life support; and either}

{(3) For certificates issued under applications filed before September 1, 2009, the dental assistant must complete at least six (6) hours of continuing education in technical and scientific coursework in the previous calendar year.}

{(A) The terms "technical" and "scientific", as applied to continuing education, shall mean that courses have significant intellectual or practical content and are designed to directly enhance the practitioner's knowledge and skill in providing clinical care to the individual patient.}

{(B) Dental assistants shall select and participate in continuing education courses offered by or endorsed by:}

{(i) dental schools, dental hygiene schools, or dental assisting schools that have been accredited by the Commission on Dental Accreditation of the American Dental Association; or,}

{(ii) nationally recognized dental, dental hygiene or dental assisting organizations.}

{(C) No more than three (3) hours of the required continuing education coursework may be in self-study; or}

{(4) For certificates issued under applications filed on or after September 1, 2009, the dental assistant must complete continuing education requirements in accordance with §114.12 of this chapter.}

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

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TRD-201703950

Kelly Parker

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: November 12, 2017

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



## 22 TAC §114.5

The State Board of Dental Examiners (Board) proposes an amendment to §114.5, concerning Coronal Polishing by Dental Assistants. The proposed amendment will eliminate the requirement that dental assistants be certified to perform coronal polishing, but will maintain all other training requirements.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to free Board staff from having to issue coronal polishing certificates in accordance with the recommendations of the Sunset Advisory Commission. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed amendment may be submitted to Tyler Vance, Assistant General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register*.

The amendment is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposal.

### §114.5. Coronal Polishing [*Certificate*].

(a) [The following term, when used in this section, shall have the following meaning, unless the context clearly indicates otherwise:] "Coronal polishing" means the removal of plaque and extrinsic stain from exposed natural and restored tooth surfaces using an appropriate rotary instrument with rubber cup or brush and polishing agent. This includes the use of a toothbrush.

(b) A Texas-licensed dentist may delegate coronal polishing to a dental assistant if the dental assistant:

(1) works under the direct supervision of the licensed dentist; and

(2) has at least two years experience as a dental assistant; and either [is certified pursuant to subsection (d) of this section.]

(A) has completed a minimum of eight (8) hours of clinical and didactic education in coronal polishing taken through a dental school, dental hygiene school, or dental assisting program accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the Board. The education must include courses on:

(i) oral anatomy and tooth morphology relating to retention of plaque and stain;

(ii) indications, contraindications, and complications of coronal polishing;

(iii) principles of coronal polishing, including armamentarium, operator and patient positioning, technique, and polishing agents;

(iv) infection control procedures;

(v) polishing coronal surfaces of teeth; and

(vi) jurisprudence relating to coronal polishing; or

(B) has either:

(i) graduated from a dental assisting program accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the board that includes specific didactic course work and clinical training in coronal polishing; or

(ii) received certification of completion of requirements specified by the Dental Assisting National Board and approved by the Board.

(c) The delegated duty of polishing by a dental assistant may not be billed as a prophylaxis.

(d) Coronal polishing must be in accordance with the minimum standard of care and limited to the dental assistant's scope of practice.

(e) The dental assistant must comply with the Dental Practice Act and Board Rules in the act of coronal polishing. Pursuant to §258.003 of the Dental Practice Act, the delegating dentist is responsible for all dental acts delegated to a dental assistant, including coronal polishing.

[(d) A dental assistant seeking certification under this section must:]

[(1) pay an application fee set by board rule; and]

[(2) on a form prescribed by the Board, provide proof that the applicant has:]

[(A) at least two years experience as a dental assistant; and either]

[(B) completed a minimum of eight (8) hours of clinical and didactic education in coronal polishing taken through a dental school, dental hygiene school, or dental assisting program accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the Board. The education must include courses on:]

[(i) oral anatomy and tooth morphology relating to retention of plaque and stain;]

[(ii) indications, contraindications, and complications of coronal polishing;]

[(iii) principles of coronal polishing, including armamentarium, operator and patient positioning, technique, and polishing agents;]

[(iv) infection control procedures;]

[(v) polishing coronal surfaces of teeth; and]

[(vi) jurisprudence relating to coronal polishing; or]

[(C) present proof to the Board that the assistant has either:]

[(i) graduated from a dental assisting program accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the board that includes specific didactic course work and clinical training in coronal polishing; or]

[(ii) received certification of completion of requirements specified by the Dental Assisting National Board and approved by the Board.]

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

Filed with the Office of the Secretary of State on September 29, 2017.

TRD-201703951

Kelly Parker

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: November 12, 2017

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



## PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

### CHAPTER 463. APPLICATIONS AND EXAMINATIONS

#### 22 TAC §463.30

The Texas State Board of Examiners of Psychologists proposes an amendment to rule §463.30, Licensing for Military Service Members, Veterans and Spouses. The proposed amendment is necessary because the agency no longer has the resources needed to administer the oral examination. Without these changes, doctoral level applicants otherwise qualified for independent practice would be unable to achieve licensure as a psychologist.

FISCAL NOTE. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule as amended. Additionally, Mr. Spinks has determined that enforcing or administering the rule as amended, does not have foreseeable implications relating to the costs or revenues of state or local government.

PUBLIC BENEFIT. Mr. Spinks has determined for the first five-year period the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public.

PROBABLE ECONOMIC COSTS. Mr. Spinks has determined for the first five-year period the proposed amendment is in effect, the amended rule will not carry a economic cost to small businesses or local economies.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS. The proposed amendment will not have an adverse effect on small or micro-businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT. The proposed amendment will not affect a local economy, thus a local employment impact statement is not required.

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

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Texas Government Code.

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

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

§463.30. *Licensing for Military Service Members, Veterans and Spouses.*

(a) Military Service Members, Veterans and Spouses.

(1) A license may be issued to a military service member, military veteran, or military spouse, as those terms are defined by Chapter 55, Occupations Code, provided that the following documentation is provided to the Board:

(A) if the applicant is a military spouse, proof of marriage to a military service member; and

(B) proof that the applicant holds a current license in another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state; or

(C) proof that within the five years preceding the application date, the spouse held the license in Texas.

(2) An applicant applying for licensure under paragraph (1) of this subsection must provide documentation from all other jurisdictions in which the applicant is licensed that indicate that the applicant has received no disciplinary action from those jurisdictions regarding a mental health license.

(3) As part of the application process, the Executive Director may waive any prerequisite for obtaining a license under this rule, other than paragraph (1)(B) and (C) of this subsection and the jurisprudence examination, if it is determined that the applicant's education, training, and experience provide reasonable assurance that the applicant has the knowledge and skills necessary for entry-level practice under the license sought. When making this determination, the Executive Director must consult with the Board's Applications Committee

and consider the committee's input and recommendations. In the event the Executive Director does not follow a recommendation of the Applications Committee, he or she must submit a written explanation to the Applications Committee explaining why its recommendation was not followed. No waiver may be granted where a military service member or military veteran holds a license issued by another jurisdiction that has been restricted, or where the applicant has an unacceptable criminal history.

(4) Alternative demonstrations of competency to meet the requirements for licensure. The following provisions provide alternative demonstrations of competency to the Board's licensing standards.

(A) Licensed Specialist in School Psychology. An applicant who meets the requirements of paragraph (1) of this subsection is considered to have met the following requirements for this type of license: submission of an official transcript, and evidence of the required coursework or National Association of School Psychologists certification, and passage of the National School Psychology Examination. All other requirements for licensure are still required.

(B) Licensed Psychological Associate. An applicant who meets the requirements of paragraph (1) of this subsection is considered to have met the following requirements for this type of license: submission of an official transcript, 450 internship hours, and passage of the Examination for Professional Practice in Psychology (EPPP) at the Texas cut-off. All other requirements for licensure are still required.

(C) Provisionally Licensed Psychologist. An applicant who meets the requirements of paragraph (1) of this subsection is considered to have met the following requirements for this type of license: submission of an official transcript, and passage of the EPPP at the Texas cut-off. All other requirements for licensure are still required.

(D) Licensed Psychologist. An applicant who meets the requirements of paragraph (1) of this subsection is considered to have met the following requirements for this type of license: two years of supervised experience. All other requirements for licensure, including the requirements of this paragraph, are still required.

(5) Determination of substantial equivalency for licensing requirements in another state. The applicant must provide to the Board proof that the state in which the applicant is licensed has standards for licensure that are substantially equivalent to the requirements of this Board for the applicable license type:

(A) Licensed Specialist in School Psychology.

(i) The completion of a training program in school psychology approved/accredited by the American Psychological Association or the National Association of School Psychologists or a master's degree in psychology with specific course work as set forth in Board rule §463.9 of this title (relating to Licensed Specialist in School Psychology); and

(ii) Passage of the National School Psychology Examination.

(B) Licensed Psychological Associate.

(i) Graduate degree that is primarily psychological in nature and consisting of at least 42 semester credit hours in total with at least 27 semester credit hours in psychology courses;

(ii) Passage of the EPPP at the Texas cut-off score; and

(iii) A minimum of 6 semester credit hours of practicum, internship, or experience in psychology, under the supervision of a licensed psychologist.

- (C) Provisionally Licensed Psychologist.
  - (i) Doctoral degree in psychology; and
  - (ii) Passage of the EPPP at the Texas cut-off score.
- (D) Licensed Psychologist.
  - (i) Doctoral degree in psychology;
  - (ii) Passage of the EPPP at the Texas cut-off score;

and

(iii) Two years or a minimum of 3,000 hours of supervised experience under a licensed psychologist. ~~and~~

~~(iv) Passage of an oral examination.]~~

(6) Renewal of License Issued to Military Service Members, Veterans, and Spouses. A license issued pursuant to this rule shall remain active until the last day of the licensee's birth month following a period of one year from the date of issuance of the license, at which time it will be subject to all renewal requirements.

(b) Applicants with Military Experience.

(1) A military service member or military veteran, as defined by Chapter 55, Occupations Code, shall receive credit toward the following licensing requirements for verified military service, training, or education:

(A) Licensed Specialist in School Psychology. A military service member or military veteran who was engaged in or who has been engaged in the delivery of psychological services within the military, for at least one year, is considered to have met the following requirements for this type of license: a practicum and 600 internship hours. All other requirements for licensure are still required.

(B) Licensed Psychological Associate. A military service member or military veteran who was engaged in or who has been engaged in the delivery of psychological services within the military, for at least one year, is considered to have met the following requirements for this type of license: 1,750 hours of supervised experience. All other requirements for licensure are still required.

(C) Licensed Psychologist. A military service member or military veteran who was engaged in or who has been engaged in the delivery of psychological services within the military, for at least one year following conferral of a doctoral degree, is considered to have met the following requirements for this type of license: one year or a minimum of 1,750 hours of supervised experience. All other requirements for licensure are still required.

(2) A military service member or military veteran may not receive credit toward licensing requirements due to military service, training, or education if they hold a license issued by another jurisdiction that has been restricted, or they have an unacceptable criminal history.

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

Filed with the Office of the Secretary of State on September 26, 2017.

TRD-201703830

Darrel D. Spinks  
 Executive Director  
 Texas State Board of Examiners of Psychologists  
 Earliest possible date of adoption: November 12, 2017  
 For further information, please call: (512) 305-7706



## PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

### CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING AND ENFORCEMENT RULES

#### SUBCHAPTER B. P.G. LICENSING, FIRM REGISTRATION, AND GIT CERTIFICATION

##### 22 TAC §851.83

The Texas Board of Professional Geoscientists (TBPG) proposes a new rule concerning the licensure and regulation of Professional Geoscientists in Texas. TBPG proposes 22 TAC §851.83, concerning Certain Licensees Temporarily Exempt from Continuing Education Requirements, for those licensees residing in Governor-designated disaster affected counties.

#### BACKGROUND AND PURPOSE

A Proclamation by the Governor of the State of Texas dated September 20, 2017, declared a state of emergency for certain counties in Texas due to Hurricane Harvey. This proposed rule allows licensees to continue practicing geoscience without interruption during the weeks and months immediately following the hurricane. Allowing licensees to continue to practice geoscience without interruption will allow them to assist in recovery, environmental damage assessment, post-flood foundation-stability assessment, environmental remediation and subsurface assessments related to structural rebuilding efforts in affected counties, thereby helping to preserve the public health, safety, and welfare in those areas, which are in imminent peril as a result of structures that have been damaged and otherwise become structurally unsound.

#### SECTION SUMMARY

Proposed new rule, §851.83, entitled Certain Licensees Temporarily Exempt From Continuing Education Requirements, outlines the process and conditions the board will use to provide temporary exemption from the continuing education requirements for those licensees residing in Governor-designated disaster affected counties, thereby allowing those licensees to renew their license in a timely manner and remain in compliance with continuing education requirements as long as the license, registration, or certification is renewed on or before August 31, 2018. This rule is intended as a temporary rule that may not remain in effect for five years, notwithstanding the preparation of five-year fiscal note and analyses.

#### FISCAL NOTE

Charles Horton, Executive Director of the Texas Board of Professional Geoscientists, has determined that for each fiscal year of the first five years the section is in effect there is no cost to the state as a result of enforcing or administering the section as proposed.

## SMALL, MICRO-BUSINESS, AND RURAL COMMUNITIES ECONOMIC IMPACT ANALYSIS

Mr. Horton has determined that the proposed rule will not have an adverse effect on small businesses, micro-businesses, or rural communities. Consequently, an economic impact statement or regulatory flexibility analysis is not required. There will be no anticipated economic cost to individuals who are required to comply with the proposed sections. There is no anticipated negative impact on state or local government.

## PUBLIC BENEFIT

Mr. Horton has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section is the uninterrupted availability of licensees to carry out public geoscience throughout the state, including areas impacted by Hurricane Harvey, and continuing the ability of the Board to effectively regulate the public practice of geoscience in Texas.

## REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

The Board has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. Although Professional Geoscientists and Registered Geoscience Firms play a key role in environmental protection for the state of Texas, this proposal is not specifically intended to protect the environment nor reduce risks to human health from environmental exposure.

## TAKINGS IMPACT ASSESSMENT

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

## PUBLIC COMMENT

Comments on the proposed new rule may be submitted in writing to Charles Horton, Executive Director, Texas Board of Professional Geoscientists, 333 Guadalupe Street, Tower I-530, Austin, Texas 78701 or by mail to P.O. Box 13225, Austin, Texas 78711 or by e-mail to [chorton@tbpge.state.tx.us](mailto:chorton@tbpge.state.tx.us). Please indicate "Comments on Proposed Rules" in the subject line of all e-mails submitted. Please submit comments within 30 days following publication of the proposal in the *Texas Register*.

This new rule is proposed under the Texas Geoscience Practice Act, Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules and regulations consistent with the Act as necessary for the performance of its duties, and the regulation of the practice of geoscience in this state; and Occupations Code §1002.154, which provides that Board shall enforce the Act.

The proposed new rule implements the Texas Occupations Code, §1002.151 and §1002.154.

## §851.83. Certain Licensees Temporarily Exempt From Continuing Education Requirements.

(a) Continuing Education: A Professional Geoscientist or a Geoscientist-in-Training who resides in a Governor-designated disaster affected county is temporarily exempt from the continuing education requirement as long as the license or certification is renewed on or before August 31, 2018.

(b) A list of the Professional Geoscientists and Geoscientists-in-Training who are temporarily exempt from the continuing education requirements under this section shall be made available on the TBPG website in a searchable format for a period of time that the executive director determines is necessary.

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

Filed with the Office of the Secretary of State on September 29, 2017.

TRD-201703933

Charles Horton

Executive Director

Texas Board of Professional Geoscientists

Earliest possible date of adoption: November 12, 2017

For further information, please call: (512) 936-4401



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

#### SUBCHAPTER RR. VALUATION MANUAL

#### 28 TAC §3.9901

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §3.9901, concerning the adoption of a valuation manual for reserving requirements. Section 3.9901 implements SB 1654, 84th Legislature, Regular Session (2015).

EXPLANATION. It is necessary to amend §3.9901 to implement the requirements of Insurance Code §425.073, which requires the commissioner to adopt a valuation manual that is substantially similar to the valuation manual approved by the National Association of Insurance Commissioners (NAIC). The NAIC Valuation Manual may be viewed through the following link: [http://www.naic.org/documents/cmte\\_a\\_latf\\_related\\_val\\_2018\\_edition\\_adopted\\_170808.pdf](http://www.naic.org/documents/cmte_a_latf_related_val_2018_edition_adopted_170808.pdf)

TDI originally adopted the NAIC Valuation Manual through §3.9901 on January 13, 2017, in compliance with Insurance Code §425.073, which required the commissioner to adopt a valuation manual substantially similar to the valuation manual approved by the NAIC.

Under Insurance Code §425.073(c), after the commissioner adopts the manual by rule, changes to the manual must be adopted by rule and the changes must be substantially similar to changes adopted by the NAIC. The changes must be adopted with an effective date of no earlier than January 1 of the year

immediately following a determination by the commissioner that changes to the valuation manual have been adopted by the NAIC. The NAIC's changes must be approved by an affirmative vote representing at least three-fourths of the members of the NAIC voting, but not less than a majority of the total membership, and by NAIC members representing jurisdictions totaling greater than 75 percent of the direct written premiums as reported in the most recently available life insurance and accident and health annual statements, health annual statements, and fraternal annual statements.

On August 9, 2017, the NAIC adopted changes to the NAIC Valuation Manual with a vote meeting the requirements set out in Insurance Code §425.073(c). On September 19, 2017, the commissioner issued Commissioner's Order No. 2017-5219, making the determination that the §423.073(c) threshold requirements regarding the NAIC vote had been met.

The NAIC Valuation Manual amendments proposed to be adopted by the commissioner provide updated reserving and reporting requirements for the valuation manual, in order to make it substantially similar to changes adopted by the NAIC. The proposed amendments would be applicable January 1, 2018.

This proposal includes provisions related to National Association of Insurance Commissioner rules, regulations, directives, or standards, and under Insurance Code §36.004 and §36.007, TDI must consider whether authority exists to enforce or adopt it. TDI has determined that Insurance Code §36.004 and §36.007 do not prohibit the proposed rule, because Insurance Code §425.073 requires TDI to adopt a valuation manual and subsection (b) of the section expressly authorizes TDI to adopt changes to the Valuation Manual that are substantially similar to changes adopted by the NAIC.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Doug Slape, deputy commissioner of the Financial Regulation Division, has determined that for each year of the first five years the proposed amendment is in effect, there will be no measurable fiscal impact on state and local governments as a result of the enforcement or administration of this proposal.

Mr. Slape does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed amendment is in effect, Mr. Slape expects that administering the proposed amendment will have the public benefits of ensuring that TDI's rules conform to Insurance Code §425.073 and the adoption of the amendments to the valuation manual, which increase the uniformity of reserving requirements amongst the states and simplify insurers' compliance with these requirements.

Mr. Slape expects that the proposed amendment will not increase the cost of compliance with Insurance Code §425.073 because it does not impose requirements beyond those in the statute. Insurance Code §425.073 requires that standard prescribed by the valuation manual is the minimum standard of valuation required under Insurance Code §425.0535. Insurance Code §425.073 requires that changes to the valuation manual must be adopted by rule and must be substantially similar to changes adopted by the NAIC. As a result, the cost associated with the actions the rule requires does not result from the enforcement or administration of the proposed amendment.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TDI has determined that the proposed amendment will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. Insurance Code §425.077 provides the commissioner with authority to grant exemptions for specific products or product lines of a domestic company that is only doing business in Texas if certain conditions are met. TDI cannot consider other regulatory methods because the requirement to adopt the valuation manual and the requirement to use the valuation manual reserving methods are set out in the statute. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** TDI has determined that this proposal does not impose a cost on regulated persons.

**TAKINGS IMPACT ASSESSMENT.** TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** Submit any written comments on the proposal no later than 5:00 p.m., Central time, on November 13, 2017. TDI requires two copies of your comments. Send one copy to ChiefClerk@tdi.texas.gov, or to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Send the other copy to fin-gm@tdi.texas.gov, or to Doug Slape, Deputy Commissioner, Financial Regulation Division, Mail Code 112-1F, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The commissioner will also consider written and oral comments on the proposal in a public hearing under Docket No. 2803 at 10:30 a.m., Central time, on November 7, 2017, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

**STATUTORY AUTHORITY.** TDI proposes §3.9901 under Insurance Code §425.073 and §36.001.

Insurance Code §425.073 requires the commissioner to adopt changes to the valuation manual that are substantially similar to the changes to the valuation manual adopted by the NAIC, and it provides that after a valuation manual has been adopted by the commissioner by rule, any changes to the valuation manual must be adopted by rule and must be substantially similar to changes adopted by the National Association of Insurance Commissioners.

Insurance Code §36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

**CROSS-REFERENCE TO STATUTE.** Section 3.9901 implements Insurance Code §425.073, enacted by SB 1654, 84th Legislature, Regular Session (2015).

§3.9901. *Adoption of Valuation Manual [Purpose] and Operative Date.*

(a) The commissioner adopts [purpose of this subchapter is to adopt] by reference the National Association of Insurance Commissioners (NAIC) Valuation Manual, including subsequent changes that

were adopted by the NAIC through August 9, 2017, as required by Insurance Code §425.073<sup>1</sup>, and to implement Insurance Code §425.077.

[(b) The commissioner adopts by reference the NAIC Valuation Manual.]

(b) [(e)] The operative date of the NAIC Valuation Manual in Texas is January 1, 2017.

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

Filed with the Office of the Secretary of State on October 2, 2017.

TRD-201703972

Norma Garcia

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: November 12, 2017

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



## CHAPTER 21. TRADE PRACTICES

### SUBCHAPTER PP. OUT-OF-NETWORK CLAIM DISPUTE RESOLUTION

The Texas Department of Insurance proposes amendments to 28 TAC Chapter 21, Subchapter PP, §§21.5001 - 21.5003, 21.5010 - 21.5013, 21.5020, 21.5030, and 21.5031 relating to Out-of-Network Claim Dispute Resolution. The amendments are necessary because of changes made to Insurance Code Chapter 1467 by Senate Bill 507, 85th Legislature, Regular Session (2017).

EXPLANATION. SB 507 amended Chapter 1467 (concerning Out-of-Network Claim Dispute Resolution) and, as a result, the department must make conforming changes to 28 TAC Chapter 21, Subchapter PP.

As amended, Chapter 1467 provides for mediation of certain claims for services provided to enrollees of preferred provider benefit plans issued under Insurance Code Chapter 1301, and to enrollees of health benefit plans-other than health maintenance organization plans-provided under Insurance Code Chapters 1551 (the Texas Employees Group Benefits Act), 1575 (the Texas Public School Employees Group Benefits Program), and 1579 (the Texas School Employees Uniform Group Health Coverage).

Chapter 1467 also expands the types of covered providers and authorizes an enrollee to request mediation of an out-of-network health benefit claim if the claim is for emergency care or health care or medical service or supply provided by a facility-based provider in a facility that is a covered plan's preferred provider or that has a contract with the plan's administrator, for services provided on or after January 1, 2018. Amending §§21.5001-21.5031 is necessary to include these changes and adopt a new mediation request form.

A description of changes to specific sections follows.

#### DIVISION 1

*Section 21.5001.* The proposal makes nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity.

*Section 21.5002.* The proposal conforms §21.5002 to amendments made by SB 507, which expand the scope of mediation to cover claims made for emergency care or health care or medical services or supplies provided by a facility-based provider in a facility that is a preferred provider or that has a contract with the administrator, provided on or after January 1, 2018, and to apply to health benefit plans under Insurance Code Chapters 1575 (concerning Texas Public School Employees Group Benefits Program) and 1579 (concerning Texas School Employees Uniform Group Health Coverage). The proposal removes the phrase "provided the claim is filed on or after November 1, 2010," from the section because the time limitation is no longer required, since there should be no claims still pending that were filed before that date. The proposal adds a savings clause for claims for health care or medical services or supplies provided before January 1, 2018, consistent with Section 18 of SB 507. The proposal also corrects a reference and makes nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity.

*Section 21.5003.* The proposal conforms the definitions in §21.5003 to amendments made by SB 507. The proposal also makes nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity.

#### DIVISION 2

*Section 21.5010.* The proposal conforms §21.5010 to amendments made by SB 507 that expand the scope of mediation. The proposal also removes the limitations and applicable dates to conform to amended §21.5002 and the savings clause added there. The proposal also makes nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity.

*Section 21.5011.* The proposal conforms §21.5011 to amendments made by SB 507 that expand the scope of mediation. The proposal adds a requirement to provide financial information about claims to aid the department and the parties in assessing and resolving issues for mediation. The proposal also makes nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity.

*Section 21.5012.* The proposal conforms §21.5012 to amendments made by SB 507 that expand the scope of mediation. The proposal also makes nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity.

*Section 21.5013.* The proposal makes nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity.

#### DIVISION 3

The proposal amends the name of the division to reflect amendments by SB 507, which require notices to be sent by facility-based providers, emergency care providers, insurers, as well as plan administrators.

*Section 21.5020.* The proposal amends §21.5020 to comply with new Insurance Code §1467.0511, as added by SB 507, and the notice it now requires in bills and explanations of benefits. The proposal also makes nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity.

## DIVISION 4

*Section 21.5030.* The proposal conforms §21.5030 to amendments made by SB 507 that expand the scope of mediation. The proposal also makes nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity.

*Section 21.5031.* The proposal makes nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Patricia Brewer, team lead for the Life and Health Regulatory Initiatives Team, has determined that during each year of the first five years that the proposed amendments are in effect, there will be no fiscal impact on state or local governments as a result of enforcing or administering the sections, other than that imposed by the statute. Ms. Brewer does not anticipate any measurable effect on local employment or the local economy as a result of the proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed amendments are in effect, Ms. Brewer expects that administering the proposed sections will have the public benefits of: (i) ensuring that the department's rules comply with Insurance Code Chapter 1467; (ii) adopting a revised mediation request form that will incorporate an authorization to disclose protected health information; (iii) clarifying changes made to Insurance Code Chapter 1467 by SB 507 for affected plans, administrators, and enrollees; and (iv) possibly reducing balance billing of patients for some out-of-network services.

Ms. Brewer expects that the proposed amendments will not increase the cost of compliance with Insurance Code Chapter 1467 because they do not impose requirements beyond those in the statute.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** The department has determined that these proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities, because to the extent they contain requirements, they simply implement statutory requirements or contain minor revisions to existing forms. As a result, and in accordance with Government Code §2006.002(c), the department is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** The department has determined that this proposal does not impose a cost on regulated persons.

**TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** The department welcomes public comment on this proposal. Submit any written comments on the proposal no later than 5:00 p.m., Central time, on November 13, 2017. The department requires two copies of your comments. Send one copy to [chiefclerk@tdi.texas.gov](mailto:chiefclerk@tdi.texas.gov), or to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Send the other copy to [LHLComments@tdi.texas.gov](mailto:LHLComments@tdi.texas.gov) or to

Patricia Brewer, Regulatory Initiatives, Life and Health Lines Office, Regulatory Policy Division, MC 106-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. To request a public hearing on the proposal, submit a request before the end of the comment period to [chiefclerk@tdi.texas.gov](mailto:chiefclerk@tdi.texas.gov), or to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. If a hearing is held, written comments and public testimony presented at the hearing will be considered.

## DIVISION 1. GENERAL PROVISIONS

### 28 TAC §§21.5001 - 21.5003

**STATUTORY AUTHORITY.** The department proposes amendments to §§21.5001, 21.5002, and 21.5003 under Section 18 of SB 507, 85th Legislature, Regular Session (2017), and Insurance Code §§1467.001, 1467.002, 1467.003, 1467.051, 1467.0511, 1467.054, and 36.001.

Section 18 of SB 507 provides that changes in law made by the bill apply to claims for health care or medical services or supplies provided on or after January 1, 2018, and includes a savings clause for claims for health care or medical services or supplies provided before that date.

Section 1467.001 contains definitions for Chapter 1467.

Section 1467.002 sets out the applicability of the chapter.

Section 1467.003 requires the commissioner, the Texas Medical Board, any other appropriate regulatory agency, and the chief administrative law judge to adopt rules as necessary to implement their respective powers and duties under Chapter 1467.

Section 1467.051 sets out the availability of mandatory mediation under Chapter 1467.

Section 1467.0511 provides for notices to enrollees of the mediation process by facility-based providers, emergency care providers, insurers, and administrators, and encourages them to provide information if contacted by enrollees about bills that may be eligible for mediation under Chapter 1467.

Section 1467.054 sets out the procedure for requesting mediation and preliminary procedures for that mediation, and it provides that a request for mandatory mediation must be provided to the department on a form prescribed by the commissioner.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the department's powers and duties under the Insurance Code and other laws of this state.

**CROSS REFERENCE TO STATUTE.** The proposed amendments to 28 TAC §21.5001 implement Insurance Code Chapter 1467. The proposed amendments to 28 TAC §21.5002 implement Section 18 of SB 507, 85th Legislature, Regular Session (2017), and Insurance Code §1467.001 and §1467.051. The proposed amendments to 28 TAC §21.5003 implement Section 18 of SB 507, 85th Legislature, Regular Session (2017), and Insurance Code §§1467.001, 1467.002, and 1467.051.

*§21.5001. Purpose.*

As authorized by Insurance Code §1467.003 (concerning Rules), the purpose of this subchapter is to:

(1) prescribe the process for requesting, [and] initiating, and conducting preliminary procedures for the mandatory mediation of claims as authorized in Insurance Code Chapter 1467 (concerning Out-of-Network Claim Dispute Resolution); and

(2) facilitate the process for the investigation and review of a complaint filed with the department that relates to the settlement of an out-of-network claim under Insurance Code Chapter 1467.

§21.5002. *Scope.*

(a) This subchapter applies to a qualified claim filed under health benefit plan coverage:

(1) issued by an insurer as a preferred provider benefit plan under Insurance Code Chapter 1301 (concerning Preferred Provider Benefit Plans), provided the claim is filed on or after November 1, 2010; or

(2) administered by an administrator of a health benefit plan, other than a health maintenance organization (HMO) plan, under Insurance Code Chapters [Chapter] 1551 (concerning Texas Employees Group Benefits Act), 1575 (concerning Texas Public School Employees Group Benefits Program), or 1579 (concerning Texas School Employees Uniform Group Health Coverage), provided the claim is for emergency care or health care or medical services or supplies provided by a facility-based provider in a facility that is a preferred provider or that has a contract with the administrator, provided on or after January 1, 2018 [filed on or after November 1, 2010].

(b) This subchapter does not apply to a claim for health benefits, including emergency care or health care or medical services or supplies [medical and health care services or supplies or both], that is not a covered claim under the terms of the health benefit plan coverage.

(c) This subchapter applies only to a claim for emergency care or health care or medical services or supplies, provided on or after January 1, 2018. A claim for health care or medical services or supplies provided before January 1, 2018, is governed by the rules in effect immediately before the effective date of this subsection, and those rules are continued in effect for that purpose.

§21.5003. *Definitions.*

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

(1) Administrator--An administering firm or a claims administrator for a health benefit plan, other than a health maintenance organization (HMO) plan, providing coverage under Insurance Code Chapters [Chapter] 1551, (concerning Texas Employees Group Benefits Act), 1575 (concerning Texas Public School Employees Group Benefits Program), or 1579 (concerning Texas School Employees Uniform Group Health Coverage).

(2) Chief administrative law judge--The chief administrative law judge of the State Office of Administrative Hearings.

(3) Claim--A request to a health benefit plan for payment for health benefits under the terms of the health benefit plan's coverage, including emergency care, or a health care or medical service or supply, or any combination of emergency care and health care or medical services and supplies [medical and health care services or supplies or both], provided that the care, services, or supplies [or both]:

(A) are furnished for a single date of service; or

(B) if furnished for more than one date of service, are provided as a continuing or related course of treatment over a period of time for a specific medical problem or condition, or in response to the same initial patient complaint.

(4) Emergency care--Has the meaning assigned by Insurance Code §1301.155 (concerning Emergency Care).

(5) Emergency care provider--A physician, health care practitioner, facility, or other health care provider who provides and

bills an enrollee, administrator, or health benefit plan for emergency care.

(6) [(4)] Enrollee--An individual who is eligible to receive benefits through a preferred provider benefit plan or a health benefit plan under Insurance Code Chapters 1551, 1575, or 1579.

(7) Facility--Has the meaning assigned by Health and Safety Code §324.001 (concerning Definitions).

(8) [(5)] Health benefit plan--A plan that provides coverage under:

(A) a preferred provider benefit plan offered by an insurer under Insurance Code Chapter 1301 (concerning Preferred Provider Benefit Plans); or

(B) a plan, other than an HMO plan, under Insurance Code Chapters [Chapter] 1551, 1575, or 1579.

(9) Facility-based provider--A physician, health care practitioner, or other health care provider who provides health care or medical services to patients of a facility.

(10) Health care practitioner--An individual who is licensed to provide health care services.

[(6) Hospital-based physician--A radiologist, an anesthesiologist, a pathologist, an emergency department physician, a neonatologist, or an assistant surgeon if the assistant surgeon's services are provided on or after September 1, 2015:]

[(A) to whom the hospital has granted clinical privileges; and]

[(B) who provides services to patients of the hospital under those clinical privileges.]

(11) [(7)] Insurer--A life, health, and accident insurance company; health insurance company; or other company operating under: Insurance Code Chapters 841 (concerning Life, Health, or Accident Insurance Companies); 842 (concerning Group Hospital Service Corporations); 884 (concerning Stipulated Premium Insurance Companies); 885 (concerning Fraternal Benefit Societies); 982 (concerning Foreign and Alien Insurance Companies); or 1501 (concerning Health Insurance Portability and Availability Act), that is authorized to issue, deliver, or issue for delivery in this state a preferred provider benefit plan under Insurance Code Chapter 1301.

(12) [(8)] Mediation--A process in which an impartial mediator facilitates and promotes agreement between the insurer offering a preferred provider benefit plan, or the administrator, and a facility-based provider or emergency care provider [hospital-based physician] or the provider's [physician's] representative to settle a qualified claim of an enrollee.

(13) [(9)] Mediator--An impartial person who is appointed to conduct mediation under Insurance Code Chapter 1467 (concerning Out-of-Network Claim Dispute Resolution).

(14) [(10)] Out-of-network claim--A claim for payment for medical or health care services or supplies or both furnished by a facility-based provider or emergency care provider [hospital-based physician] that is not contracted as a preferred provider with a preferred provider benefit plan or contracted with an administrator.

(15) [(11)] Preferred provider--A facility, facility-based provider, or emergency care provider [hospital or hospital-based physician] that contracts on a preferred-benefit basis with an insurer issuing a preferred provider benefit plan under Insurance Code Chapter 1301 to provide medical care or health care to enrollees covered by a health insurance policy.

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

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Norma Garcia

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Texas Department of Insurance

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



## DIVISION 2. MEDIATION PROCESS

### 28 TAC §§21.5010 - 21.5013

**STATUTORY AUTHORITY.** The department proposes amendments to §§21.5010 - 21.5013 under Insurance Code §§1467.001, 1467.002, 1467.003, 1467.051, 1467.0511, 1467.054, and 36.001.

Section 1467.001 contains definitions for Chapter 1467.

Section 1467.002 sets out the applicability of the chapter.

Section 1467.003 requires the commissioner, the Texas Medical Board, the chief administrative law judge, and any other appropriate regulatory agency to adopt rules as necessary to implement their respective powers and duties under Chapter 1467.

Section 1467.051 sets out the availability of mandatory mediation under Chapter 1467.

Section 1467.0511 provides for notices to enrollees of the mediation process by facility-based providers, emergency care providers, insurers, and administrators, and encourages them to provide information if contacted by enrollees about bills that may be eligible for mediation under Chapter 1467.

Section 1467.054 sets out the procedure for requesting mediation and preliminary procedures for that mediation, and it provides that a request for mandatory mediation must be provided to the department on a form prescribed by the commissioner.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the department's powers and duties under the Insurance Code and other laws of this state.

**CROSS REFERENCE TO STATUTE.** The proposed amendments to 28 TAC §21.5010 implement Insurance Code §1467.001 and §1467.051. The proposed amendments to 28 TAC §21.5011 and §21.5012 implement Insurance Code §1467.051 and §1467.054. The proposed amendments to 28 TAC §21.5013 implement Insurance Code §1467.003 and §1467.054.

#### §21.5010. *Qualified Claim Criteria.*

(a) Required criteria. An enrollee may request mandatory mediation of an out-of-network claim under §21.5011 of this title (relating to Mediation Request Form and Procedure) if the claim complies with the criteria specified in this subsection. An out-of-network claim that complies with those criteria is referred to as a "qualified claim" in this subchapter.

- (1) The out-of-network claim must be for:

(A) emergency care; or

(B) a health care or medical service [services] or supply [supplies, or both], provided by a facility-based provider [a hospital-based physician] in a facility [hospital] that is a preferred provider with the insurer or that has a contract with the administrator.

{(2) For services provided before September 1, 2015, the aggregate amount for which the enrollee is responsible to the hospital-based physician for the out-of-network claim, not including copayments, deductibles, coinsurance, or amounts paid by an insurer or administrator directly to the enrollee, must be greater than \$1,000.]

(2) [(3)] The [For services provided on or after September 1, 2015, the] aggregate amount for which the enrollee is responsible to the facility-based provider or emergency care provider [hospital-based physician] for the out-of-network claim, not including copayments, deductibles, coinsurance, or amounts paid by an insurer or administrator directly to the enrollee, must be greater than \$500.

(b) Submission of multiple claim forms. The use of more than one form in the submission of a claim, as defined in §21.5003 [§21.5003(3)] of this title (relating to Definitions), does not prevent eligibility of a claim for mandatory mediation under this subchapter if the claim otherwise meets the requirements of this section.

(c) Ineligible claims.

(1) An out-of-network claim is not eligible for mandatory mediation under this subchapter if:

(A) the facility-based provider [hospital-based physician] has provided a complete disclosure to an enrollee under Insurance Code §1467.051(c) [§1467.051] (concerning Availability of Mandatory Mediation; Exception), and this subsection before providing the medical service or supply or both and has obtained the enrollee's written acknowledgment of that disclosure; and

(B) the amount billed by the facility-based provider [hospital-based physician] is less than or equal to the maximum amount specified in the disclosure.

(2) A complete disclosure under paragraph (1) of this subsection must:

(A) explain that the facility-based provider [hospital-based physician] does not have, as applicable, either a contract with the enrollee's health benefit plan as a preferred provider or a contract with the administrator of the plan, other than an HMO plan, provided under Insurance Code Chapters [Chapter] 1551 (concerning Texas Employees Group Benefits Act), 1575 (concerning Texas Public School Employees Group Benefits Program), or 1579 (concerning Texas School Employees Uniform Group Health Coverage);

(B) disclose projected amounts for which the enrollee may be responsible; and

(C) disclose the circumstances under which the enrollee would be responsible for those amounts.

(d) Qualification continues. A claim that meets the criteria to be [for] a qualified claim after claim adjudication by the insurer or administrator does not lose that status by virtue of the aggregate amount for which the enrollee is responsible being reduced below the thresholds set out in this section without the consent of the enrollee.

#### §21.5011. *Mediation Request Form and Procedure.*

(a) Mediation request form. The commissioner adopts by reference Form No. CP029 (Health Insurance Mediation Request Form), which is available at [www.tdi.texas.gov/consumer/cpmmmediation.html](http://www.tdi.texas.gov/consumer/cpmmmediation.html). Form No. CP029 (Health Insurance Mediation Request

Form) requires information necessary for the department to properly identify the qualified claim, including:

- (1) the name and contact information, including a telephone number, of the enrollee requesting mediation;
- (2) a brief description of the qualified claim to be mediated, including the amount sought from the enrollee, not including co-payments, deductibles, coinsurance, or amounts paid by an insurer or administrator directly to the enrollee;
- (3) the name and contact information, including a telephone number, of the requesting enrollee's counsel, if the enrollee retains counsel;
- (4) the name of the facility-based provider or emergency care provider [~~hospital-based physician~~];
- (5) the name of the insurer or administrator;
- (6) the name and address of the facility [~~hospital~~] where services were rendered; and
- (7) an authorization allowing the department to disclose the enrollee's protected health information or other confidential information to the facility-based provider or emergency care provider [~~hospital-based physician and the hospital-based physician's representative~~], the enrollee's health benefit plan's insurer or administrator, the benefit plan's representative or representatives, the insurer or administrator's representative or representatives, the appointed mediator, and the State Office of Administrative Hearings.

(b) Submission of request. An enrollee may submit a request for mediation by completing and submitting Form No. CP029 (Health Insurance Mediation Request Form) as provided in [paragraphs (1) - (4) of] this subsection. The request may be submitted:

- (1) by mail to the Texas Department of Insurance, Consumer Protection Section, MC 111-1A, P.O. Box 149091, Austin, Texas 78714-9091;
- (2) by fax to 512-490-1007;
- (3) by email to [ConsumerProtection@tdi.texas.gov](mailto:ConsumerProtection@tdi.texas.gov); or
- (4) online, when the department makes Form No. CP029 (Health Insurance Mediation Request Form) available to be completed and submitted online.

(c) Assistance. Assistance with submitting a request for mediation is available at the department's toll-free telephone number, [1-]800-252-3439.

*§21.5012. Informal Settlement Teleconference.*

An insurer or administrator subject to mandatory mediation requested by an enrollee under this subchapter [~~§21.5014 of this title (relating to Mediation Request Form and Procedure)~~] must use best efforts to coordinate the informal settlement teleconference required by Insurance Code §1467.054 (concerning Request and Preliminary Procedures for Mandatory Mediation) by:

- (1) arranging a date and time when the insurer or administrator; the enrollee or the enrollee's representative, if the enrollee or the enrollee's representative[-] chooses to participate; and the facility-based provider or emergency care provider [~~hospital-based physician~~] or the facility-based provider's or emergency care provider's [~~hospital-based physician's~~] representative can participate in the informal settlement teleconference, which must occur not later than the 30th day after the date on which the enrollee submitted a request for mediation; and
- (2) providing a toll-free telephone number for participation in the informal settlement teleconference.

*§21.5013. Mediation Participation.*

(a) An insurer or administrator subject to mediation under this subchapter must participate in mediation in good faith and is subject to any rules adopted by the chief administrative law judge under [~~in accordance with~~] Insurance Code §1467.003 (concerning Rules).

(b) Under Insurance Code §1467.101 (concerning Bad Faith), conduct that constitutes bad faith mediation includes failing to:

- (1) participate in the mediation;
- (2) provide information that the mediator believes is necessary to facilitate an agreement; or
- (3) designate a representative participating in the mediation with full authority to enter into any mediated agreement.

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

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Norma Garcia

General Counsel

Texas Department of Insurance

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



## DIVISION 3. REQUIRED NOTICE OF CLAIMS DISPUTE RESOLUTION

### 28 TAC §21.5020

STATUTORY AUTHORITY. The department proposes amendments to §21.5020 under Insurance Code §§1467.003, 1467.051, 1467.0511, and 36.001.

Section 1467.003 requires the commissioner, the Texas Medical Board, any other appropriate regulatory agency, and the chief administrative law judge to adopt rules as necessary to implement their respective powers and duties under Chapter 1467.

Section 1467.051 sets out the availability of mandatory mediation under Chapter 1467.

Section 1467.0511 provides for notice and information to be sent to enrollees by facility-based providers, emergency care providers, insurers, and administrators, and encourages them to provide certain information to enrollees.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the department's powers and duties under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The proposed amendments to 28 TAC §21.5020 implement Insurance Code §1467.051 and §1467.0511 and SB 507, 85th Legislature, Regular Session (2017), which amends Insurance Code Chapter 1467.

*§21.5020. Required Notice of Claims Dispute Resolution.*

(a) A bill sent to an enrollee by a facility-based provider or emergency care provider or an explanation of benefits sent to an en-

rollee by an insurer or administrator for an out-of-network health benefit claim eligible for mediation under Insurance Code Chapter 1467 must contain, in not less than 10-point boldface type, a conspicuous, plain-language explanation of the mediation process available under this chapter, including information on how to request mediation and a statement that is substantially similar to the following: "You may be able to reduce some of your out-of-pocket costs for an out-of-network medical or health care claim that is eligible for mediation by contacting the Texas Department of Insurance at [www.tdi.texas.gov/consumer/cpmmmediation.html](http://www.tdi.texas.gov/consumer/cpmmmediation.html) or by calling 800-252-3439."

(b) If an enrollee contacts an insurer, administrator, or facility-based provider or emergency care provider about a bill that may be eligible for mediation under this chapter, the insurer, administrator, or facility-based provider or emergency care provider is encouraged to:

- (1) inform the enrollee about mediation under this chapter; and
- (2) provide the enrollee with the department's toll-free telephone number and web address.

[An administrator of a plan under Insurance Code Chapter 1551 (concerning Texas Employees Group Benefits Act), must include a notice of the availability of mandatory mediation under this subchapter with each explanation of benefits sent to an enrollee for an out-of-network claim for services, supplies, or both, furnished in a hospital that has a contract with the administrator.]

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

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Norma Garcia

General Counsel

Texas Department of Insurance

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



## DIVISION 4. COMPLAINT RESOLUTION AND OUTREACH

### 28 TAC §21.5030, §21.5031

STATUTORY AUTHORITY. The department proposes amendments to §21.5030 and §21.5031 under Insurance Code §§1467.003, 1467.051, 1467.0511, 1467.054, and 36.001.

Section 1467.003 requires the commissioner, the Texas Medical Board, any other appropriate regulatory agency, and the chief administrative law judge to adopt rules as necessary to implement their respective powers and duties under Chapter 1467.

Section 1467.051 sets out the availability of mandatory mediation under Chapter 1467.

Section 1467.0511 provides for notices to enrollees of the mediation process by facility-based providers, emergency care providers, insurers, and administrators, and encourages them to provide information if contacted by enrollees about bills that may be eligible for mediation under Chapter 1467.

Section 1467.054 sets out the procedure for requesting mediation and preliminary procedures for that mediation, and it provides that a request for mandatory mediation must be provided to the department on a form prescribed by the commissioner.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the department's powers and duties under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The proposed amendments to 28 TAC §21.5030 and §21.5031 implement Insurance Code §1467.051 and §1467.054. The proposed amendments to 28 TAC implement Insurance Code §1467.051 and §1467.054.

§21.5030. *Complaint Resolution.*

(a) Written complaint.

(1) An individual may submit a written complaint to the department regarding a qualified claim or a mediation [that has been] requested under §21.5010 of this title (relating to Qualified Claim Criteria). A recommended form for filing a complaint under this subsection is available online at [www.tdi.texas.gov/consumer/cpmmmediation.html](http://www.tdi.texas.gov/consumer/cpmmmediation.html). The complaint may be submitted by:

(A) mail to the Texas Department of Insurance, Consumer Protection Section, MC 111-1A, P.O. Box 149091, Austin, Texas 78714-9091;

(B) fax to 512-490-1007;

(C) email to [ConsumerProtection@tdi.texas.gov](mailto:ConsumerProtection@tdi.texas.gov); or

(D) online submission.

(2) Assistance with filing a complaint is available at the department's toll-free telephone number, [+ ] 800-252-3439.

(b) Complaint form. The recommended form for filing a complaint under subsection (a) of this section requests information concerning the complaint, including:

(1) whether the complaint is within the scope of Insurance Code Chapter 1467 (concerning Out-of-Network Claim Dispute Resolution);

(2) whether emergency care, health care, or a medical service have [medical care has] been delayed or have [has] not been given;

(3) whether the health care, medical service, or supply, or a combination of health care, medical service, or supply, [thereof] that is the subject of the complaint was for emergency care; and

(4) specific information about the qualified claim, including:

(A) the name, type, and specialty of the facility-based provider or emergency care provider [hospital-based physician];

(B) the type of service performed or supplies provided;

(C) the city and county where the service was performed; and

(D) the dollar amount of the disputed claim.

(c) Department processing [Processing]. The department will maintain procedures to ensure that a written complaint made under this section is not dismissed without appropriate consideration, including:

(1) review of all of the information submitted in the written complaint;

(2) contact with the parties that are the subject of the complaint;

(3) review of the responses received from the subjects of the complaint to determine if and what further action is required, as appropriate; and

(4) notification to the enrollee of the mediation process, as described in Insurance Code Chapter 1467, Subchapter B (concerning Mandatory Mediation).

*§21.5031. Department Outreach.*

In addition to the notice provided to consumers regarding the availability of mandatory mediation described in §21.5030 [~~§21.5030(e)~~] of this title (relating to Complaint Resolution), the department will provide outreach as required by Insurance Code §1467.151(a)(2) (concerning Consumer Protection; Rules), by making information concerning the availability of this mandatory mediation process available:

- (1) on the department's website; and
- (2) in consumer publications.

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

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Norma Garcia

General Counsel

Texas Department of Insurance

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## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 10. TRANSPARENCY

##### SUBCHAPTER A. ANNUAL REPORT OF FINANCIAL INFORMATION BY POLITICAL SUBDIVISION

###### 34 TAC §§10.1 - 10.6

The Comptroller of Public Accounts proposes new §§10.1 - 10.6 concerning definitions; annual local debt report; annual local debt report form; reporting requirements; water district alternative; and comptroller procedures. The new rules will be under Title 34, Part 1, new Chapter 10, Transparency, Subchapter A, Annual Report of Financial Information by Political Subdivision. This new chapter implements the requirements of House Bill 1378, 84th Legislature, 2015, codified under Local Government Code, §140.008. The new rules establish guidelines for the format, submission and web posting and/or web linking of reporting of political subdivisions' required annual debt information, including that of water districts described in Water Code, Chapter 49. The comptroller made a draft version of these proposed new rules available for informal comment on its Internet website in January of 2017, but has not received any informal comments or questions regarding the draft as of the date of this publication.

New §10.1 defines phrases, words and terms describing annual debt reporting for political subdivisions. New §10.2 describes the financial information required in the Annual Local Debt Report to be compiled and reported by political subdivisions in accordance with Local Government Code, §140.008. New §10.3 describes the optional reporting form to be provided by the comptroller and explains how political subdivisions may obtain the form. New §10.4 explains annual debt reporting requirements and report submission options available to political subdivisions. New §10.5 identifies requirements for annual debt reporting applicable to water districts as defined in Water Code, Chapter 49. New §10.6 sets forth the comptroller's duties under this subchapter, including requirements that the comptroller receive and post Annual Local Debt Reports and other documents on the comptroller's website and make this information easily searchable by the public.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rules will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rule are in effect, the public benefit anticipated as a result of enforcing the rules will be by making available to the public local government debt information. The proposed amendments would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposals may be submitted to Will Counihan, Director, Data Analysis and Transparency Division, Comptroller of Public Accounts, at [Will.Counihan@cpa.texas.gov](mailto:Will.Counihan@cpa.texas.gov) or at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*. For further information, please call Mr. Counihan at (512) 936-0758

The new subchapter is proposed under Local Government Code, §140.008, Subsections (d), (e), and (h), which authorize the comptroller to adopt rules necessary for the implementation of Local Government Code, §140.008, Subsections (d), (e), (g), and (h).

The proposed new subchapter implements Local Government Code, §140.008.

###### §10.1. Definitions.

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

(1) Affidavit of financial dormancy--The affidavit described by Water Code, Chapter 49, Subchapter G, that may be submitted by a water district under §10.5 of this title (relating to Water District Alternative) and which states that the district is financially dormant and has less than \$500 in receipts or disbursements, no bonds or liabilities, and no cash investments exceeding \$5,000 in a calendar year.

(2) Authorized--With respect to a public security, authorized means allowed or directed by a resolution, order, or ordinance that is approved or adopted in a proceeding by the governing body of an issuer in authorizing the issuance of a public security.

(3) Combined principal and interest required to pay all outstanding debt obligations on time and in full--Total amount borrowed (par) that has yet to be repaid plus the cost of interest.

(4) Combined principal and interest required to pay all outstanding debt obligations secured by ad valorem taxation on time and in full--Total amount borrowed (par) of all property tax-secured obligations that has yet to be repaid plus the cost of interest.

(5) Combined principal and interest required to pay all outstanding debt obligations secured by ad valorem taxation on time and in full as a per capita amount--Total debt obligations secured by a pledge of property taxes plus the cost of debt service on these obligations divided by the population of the political subdivision.

(6) Combined principal and interest required to pay each outstanding debt obligations on time and in full--Total amount borrowed (par) plus the cost of interest for each individual debt obligation or bond series.

(7) Current credit rating--Existing rating given by any nationally recognized credit rating organization to debt obligations.

(8) Final maturity date--Final payment date of individual debt obligation at which point all principal and interest will be paid off.

(9) Issuance or issued--The process of authorizing, selling, and delivering public debt.

(10) Official stated purpose for which a debt obligation was authorized--The reason for the debt issuance as described in ballot language if applicable or the official statement.

(11) Outstanding debt obligation--An issued public security that has yet to be repaid.

(12) Outstanding principal--Total amount borrowed that has yet to be repaid.

(13) Political subdivision--A county, municipality, school district, junior college district, other special district, or other subdivision of state government subject to the reporting requirements set forth under Local Government Code, §140.008. This definition includes a municipality with a population of less than 15,000 and a county with a population of less than 35,000.

(14) Principal issued--The total amount borrowed.

(15) Proceeds spent--The portion of total proceeds received that have been spent.

(16) Proceeds unspent--The portion of total proceeds received that are remaining to be spent.

(17) Secured in any way by ad valorem taxes--Indicates which individual debt obligations are in part or entirely pledged with property taxes.

(18) Total authorized debt obligations--Debt obligations are defined as public securities which are instruments, including bonds, certificates, notes, or other types of obligations authorized to be issued by an issuer under a statute, a municipal home-rule charter, or the constitution of this state.

(19) Total authorized debt obligations secured by ad valorem taxation--Total debt obligations secured by a pledge of property taxes.

(20) Total authorized debt obligations secured by ad valorem taxation expressed as a per capita amount--Total authorized debt obligations secured by a pledge of property taxes divided by the population of the political subdivision.

(21) Total principal of all outstanding debt obligations--Total amount borrowed (par) of all obligations that have yet to be repaid.

(22) Total principal of all outstanding debt obligations secured by ad valorem taxation--Total amount borrowed (par) of obligations secured by a pledge of property taxes that have yet to be repaid.

(23) Total principal of outstanding debt obligations secured by ad valorem taxation as a per capita amount--Total amount borrowed (par) secured by a pledge of property taxes divided by the population of the political subdivision.

(24) Total proceeds received--Total assets received from the sale of a new issue of public securities.

#### §10.2. Annual Local Debt Report.

(a) A political subdivision shall annually compile and report certain financial information ("Annual Local Debt Report") in the manner prescribed by this subchapter.

(b) The Annual Local Debt Report to be compiled and reported by a political subdivision must include the following financial information:

(1) Regarding total authorized debt obligations:

(A) the amount of all authorized debt obligations;

(B) the principal of all outstanding debt obligations;

(C) the combined principal and interest required to pay all outstanding debt obligations on time and in full;

(D) the amount of all authorized debt obligations secured by property taxes;

(E) the principal of all outstanding debt obligations secured by property taxes;

(F) the combined principal and interest required to pay all outstanding debt obligations secured by property taxes on time and in full;

(G) the amount of all authorized debt obligations secured by property taxes for municipalities, counties or school districts expressed as a per capita amount;

(H) the principal of all outstanding debt obligations secured by property taxes for municipalities, counties or school districts expressed as a per capita amount;

(I) the combined principal and interest required to pay all outstanding debt obligations on time and in full for all obligations secured by property taxes expressed as a per capita amount; and

(J) the current credit rating on total debt obligations given by any nationally recognized credit rating organization.

(2) Regarding each authorized debt obligation:

(A) the principal of each outstanding debt;

(B) the principal of each outstanding debt obligation secured by property taxes for municipalities, counties or school districts expressed as a per capita amount;

(C) the combined principal and interest required to pay each outstanding debt obligation on time and in full;

(D) the combined principal and interest required to pay each outstanding debt obligation on time and in full for municipalities, counties or school districts expressed as a per capita amount;

(E) the issued and unissued amounts, the spent and unspent amounts, the maturity date and the stated purpose for which each debt obligation was authorized; and

(F) the current credit rating on each debt obligation given by any nationally recognized credit rating organization.

(3) Any other information considered relevant or necessary to explain the above required data elements, such as explanations of payment sources for different kinds of debt or projections of per capita amounts of ad valorem taxation-secured obligations as of the last day of the maximum term of the most recent debt obligation issued by the political subdivision.

§10.3. Annual Local Debt Report Form.

(a) The comptroller shall provide an Annual Local Debt Report Form for use by a political subdivision under this subchapter. Copies of the form may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528. The form may be viewed or downloaded from the comptroller's website at <https://comptroller.texas.gov/transparency/local/hb1378/apply.php>. Copies may also be requested by calling our toll-free number, (844) 519-5676, or by e-mailing staff at [transparency@cpa.texas.gov](mailto:transparency@cpa.texas.gov).

(b) The comptroller may update the Annual Local Debt Report Form as needed.

§10.4. Reporting Requirements.

(a) In order to comply with §10.2 of this title (relating to Annual Local Debt Report), on an annual basis, and within 180 days of the end of the most recently completed fiscal year, a political subdivision shall either:

(1) submit via upload to the comptroller's Internet web site the completed Annual Local Debt Report Form provided by the comptroller and, if the political subdivision maintains an Internet website, continually maintain a link from its website to the location on the comptroller's website where the political subdivision's financial information may be viewed; or

(2) post the information required in an Annual Local Debt Report on the political subdivision's own Internet website.

(b) The governing body of a political subdivision that elects to post its annual debt information on its own Internet website as described in subsection (a)(2) of this section shall take action to ensure that:

(1) this information is made available for inspection by any person and posted continuously on the political subdivision's website until the political subdivision posts the next year's annual debt information; and

(2) the contact information for the political subdivision's main office is posted continuously on the website and such information includes a physical address, mailing address, main telephone number, and an e-mail address.

(c) For Fiscal Year 2016 and Fiscal Year 2017, a political subdivision shall submit to the comptroller or post the annual debt information described in subsection (a) of this section by the later of 180 days after the end of the respective fiscal year or 180 days after the effective date of this rule.

§10.5. Water District Alternative.

(a) A water district as defined under Water Code, §49.001, complies with the requirements of this subchapter if the district submits to the comptroller via web upload on an annual basis and within 180 days of the end of the most recently completed fiscal year one of the following:

(1) an annual financial report as described by Water Code, Chapter 49, Subchapter G;

(2) an audit report as described by Water Code, Chapter 49, Subchapter G; or

(3) an affidavit of financial dormancy as described by Water Code, Chapter 49, Subchapter G.

(b) For Fiscal Year 2016 and Fiscal Year 2017, a water district shall submit the information described in subsection (a) of this section by the later of 180 days after the end of the respective fiscal year or 180 days after the effective date of this rule.

§10.6. Comptroller Procedures.

(a) The comptroller shall receive the Annual Local Debt Report from political subdivisions (to include municipalities with a population of less than 15,000 and counties with a population of less than 35,000) electing to provide such information under §10.4(a)(1) of this title (relating to Reporting Requirements).

(b) The comptroller shall post each Annual Local Debt Report on the annual local debt reporting section of the comptroller's Internet website, making each political subdivision's report easily located via a search function.

(c) The comptroller shall receive and post on the annual local debt reporting section of its Internet website one of the following for each water district as defined under Water Code, §49.001: an annual financial report, an affidavit of financial dormancy, or an audit report.

(d) The comptroller is committed to making its website and all electronic and information resources accessible to persons with disabilities by applying principles of accessibility and usability design to its information collection and publication practices. Accordingly, the comptroller may require documents submitted to it under this section to comply with the accessibility standards and specifications described in 1 TAC Chapters 206 and 213.

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

Filed with the Office of the Secretary of State on September 28, 2017.

TRD-201703918

Lita Gonzalez

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: November 12, 2017

For further information, please call: (512) 475-0387



**TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

**PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT**

**CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES**  
**SUBCHAPTER A. ADMISSION, PLACEMENT, RELEASE, AND DISCHARGE**  
**DIVISION 6. PAROLE PLACEMENT AND DISCHARGE**

### 37 TAC §380.8581, §380.8583

The Texas Juvenile Justice Department (TJJD) proposes amendments to §380.8581, concerning Supervision Levels in Parole Home Placement, and §380.8583, concerning Subsidized Living Support Program.

Amended §380.8581 will remove the requirement for a youth to be placed on intensive parole supervision for the entire time he/she receives a housing rent subsidy. The amended rule will also add that the executive director or designee may waive the requirement for a youth to initially be placed on intensive supervision upon release to parole.

Amended §380.8583 will: (1) change the purpose and title of the rule to focus on promotion of successful community reentry rather than on self-sufficiency; (2) add that youth in halfway houses (in addition to youth on parole status) may receive financial support; (3) remove the eligibility criteria relating to completing a certain amount of community service, employment, or school for youth to receive financial support other than a housing rent subsidy; (4) remove the requirement for a youth to sign an agreement with TJJD to receive financial support other than a housing rent subsidy; (5) add *structured leisure time activity* to the list of allowable expenses; (6) add that expenses other than those listed in the rule may be eligible for financial reentry support; (7) add a requirement that, to receive financial reentry support, the youth must complete a request form that shows how the financial need is directly related to his or her community reintegration plan; (8) remove the requirement for a youth to be placed on the highest level of parole supervision for the entire time he/she receives a housing rent subsidy; (9) remove the prohibition on youth who are required to register as sex offenders from being eligible to receive financial reentry support for on-campus college housing; (10) add that the division director over parole services or his/her designee is the approval authority for requests for financial reentry support; (11) clarify that financial reentry support may not be *expended* (rather than used for expenses that are incurred) after a youth's discharge from TJJD; and (12) add that the *executive director or designee* (rather than the division director over the subsidized living support program) may make exceptions to this rule on a case-by-case basis.

#### FISCAL NOTE

Mike Meyer, Chief Financial Officer, has determined that for each year of the first five years the amended sections are in effect, there will be no significant fiscal impact for local governments as a result of enforcing or administering the sections. To the extent the financial reentry support program is enhanced under the amended sections, there may be a cost savings for state government over that same time frame. It is expected that an enhanced program would have a positive impact on youths' transition to the community and contribute to lower parole revocation rates. However, any resulting cost savings cannot be reliably estimated at this time.

#### PUBLIC BENEFITS/COSTS

Rebecca Walters, Senior Director for Youth Placement, Reentry, and Program Development, has determined that for each year of the first five years the amended sections are in effect, the public benefit anticipated as a result of administering the sections will be promoting successful outcomes for youth upon community reentry, thereby enhancing public safety.

Mr. Meyer has also determined that there will be no effect on small businesses, micro-businesses, or rural communities.

There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these sections.

#### PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Steve Roman, Policy Coordinator, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas, 78711, or email to [policy.proposals@tjtd.texas.gov](mailto:policy.proposals@tjtd.texas.gov).

#### STATUTORY AUTHORITY

The amended sections are proposed under Section 242.003, Human Resources Code, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs; Section 242.059, Human Resources Code, which authorizes TJJD to establish active parole supervision to aid children given conditional release to find homes and employment and to become reestablished in the community; and Section 245.001, Human Resources Code, which authorizes TJJD to employ parole officers to investigate, place, supervise, and direct the activities of a parolee to ensure the parolee's adjustment to society in accordance with TJJD's rules.

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

#### §380.8581. *Supervision Levels in Parole Home Placement.*

(a) Purpose. This rule provides [~~The purpose of this rule is to provide~~] for varying intensity levels of supervision for youth on parole status in a home placement or home substitute placement.

(b) Definitions. For definitions of certain terms used in this rule, see §380.8501 of this title.

(c) General Provisions.

(1) Levels of supervision intensity are based on each youth's needs and the degree of risk presented to the public. The three levels of parole supervision are minimum, moderate, and intensive.

(2) Upon release, all youth are initially placed on intensive supervision unless waived by the executive director or designee on a case-by-case basis.

~~{(3) Youth who receive a housing rent subsidy under §380.8583 of this title remain on intensive supervision for the duration of the subsidy.}~~

(3) ~~[(4)]~~ The level [~~Levels~~] of supervision is [~~are~~] reassessed at least once every [~~on a scheduled basis not to exceed~~] 90 days or [~~and any time~~] sooner, as deemed appropriate by the parole officer. This reassessment may result in an increase, a decrease, or no change in the level of [~~parole~~] supervision.

#### §380.8583. *Financial Support for Reentry* [~~Subsidized Living Support Program~~].

(a) Purpose. This rule promotes successful community reentry by providing limited, targeted financial support to eligible youth. [~~The purpose of this rule is to establish a program to provide eligible youth with financially subsidized living support for a limited time as necessary to attain self-sufficiency.~~]

(b) Definitions. For definitions of certain terms used in this rule, see §380.8501 of this title.

(c) Eligibility Criteria.

(1) To qualify for financial reentry [~~subsidized living~~] support, the youth must:

~~[(A) complete an independent living preparation curriculum approved by TJJD;]~~

~~(A) [(B)] be assigned to parole status or be placed in a halfway house; and~~

~~(B) have an identified financial need that:~~

~~(i) cannot be met using the youth's student trust fund or other resources available to the youth; and~~

~~(ii) is directly related to the youth's community reintegration plan.~~

~~[(C) complete a specified number of hours of community service as established by TJJD;]~~

~~[(D) complete a specified number of months of employment or school attendance as established by TJJD; and]~~

~~[(E) sign a subsidized living support agreement.]~~

~~(2) To qualify for a housing rent subsidy, a youth must meet the following criteria in [In] addition to the criteria in paragraph (1) of this subsection[, a youth must meet the following criteria to qualify for a housing rent subsidy]:~~

~~(A) be assigned to parole status;~~

~~(B) complete an independent living preparation curriculum approved by TJJD;~~

~~(C) complete the number of hours of community service specified by TJJD;~~

~~(D) complete the number of months of employment or school attendance specified by TJJD;~~

~~(E) sign a subsidized living support agreement;~~

~~(F) [(A)] be [the youth is] at least 18 years of age; and~~

~~(G) [(B)] have [the youth has] enough personal savings to pay all necessary deposits and the first month's rent. [; and]~~

~~(3) [(C)] A housing rent subsidy may be provided only if TJJD has determined it is in the youth's best interest to be placed in an unsupervised home location.~~

~~(d) Requests and Approvals. To receive financial reentry support, a youth must:~~

~~(1) complete and submit the appropriate request form, which must show how the financial need is directly related to the youth's community reintegration plan; and~~

~~(2) receive approval from the division director over parole services or designee.~~

~~(e) [(d)] [Subsidy] Limitations.~~

~~(1) The provision of financial reentry support [subsidies] is contingent on the availability of funds.~~

~~(2) TJJD may terminate a youth's financial reentry support [subsidy] due to a youth's failure to abide by:~~

~~(A) his/her conditions of parole or conditions of placement; or~~

~~(B) the terms of the subsidized living support agreement, if applicable.~~

~~(3) A housing rent subsidy may not be provided for longer than six months.~~

~~(4) Financial reentry support [A subsidy] may not be expended [used for expenses that are incurred] after a youth is discharged from TJJD's jurisdiction.~~

~~(5) Financial reentry support [A subsidy] may be provided [only] for [the following] expenses including, but not limited to:~~

~~(A) rent;~~

~~(B) electric service;~~

~~(C) household goods;~~

~~(D) food;~~

~~(E) public transportation passes;~~

~~(F) employment-related clothing;~~

~~(G) college expenses, such as tuition, books, and room and board; [and]~~

~~(H) technical school or training expenses, such as tuition and tools; and[-]~~

~~(I) structured leisure time activities.~~

~~[(6) Youth required to register as sex offenders are not eligible to receive a subsidy for on-campus college housing expenses.]~~

~~(f) [(e)] Program Requirements for Youth Receiving a Housing Rent Subsidy.~~

~~[(1) The youth is placed on the highest level of parole supervision for the entire time he/she receives a housing rent subsidy.]~~

~~(1) [(2)] A [The] youth's parole officer has [will have] access to the [a] youth's living quarters in accordance with the terms of the subsidized living support agreement.~~

~~(2) [(3)] The youth's personal property will be disposed of in accordance with the terms of the subsidized living support agreement if the youth's parole is revoked or if the property is lost, damaged, or abandoned.~~

~~(g) [(f)] Individual Exceptions. The executive director or designee [division director over the subsidized living support program] may make exceptions to provisions of this rule on a case-by-case basis, taking into consideration a youth's reintegration needs and public safety.~~

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

Filed with the Office of the Secretary of State on September 26, 2017.

TRD-201703846

Jill Mata

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: November 12, 2017

For further information, please call: (512) 490-7014



## TITLE 43. TRANSPORTATION

### PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

## CHAPTER 1. MANAGEMENT

### SUBCHAPTER F. ADVISORY COMMITTEES

#### 43 TAC §§1.82, 1.84 - 1.88

The Texas Department of Transportation (department) proposes amendments to §1.82, Statutory Advisory Committee Operations and Procedures, §1.84, Statutory Advisory Committees, §1.85, Department Advisory Committees, §1.86, Corridor Advisory Committees, and §1.87, Corridor Segment Advisory Committees; and new §1.88, Interim Report.

#### EXPLANATION OF PROPOSED AMENDMENTS

The amendments are the result of statutory changes made by the legislature during the 85th Regular Session, 2017 and the Texas Transportation Commission's (commission) review of the need to continue the existence of the commission's advisory committees.

Amendments to §1.82, Statutory Advisory Committee Operations and Procedures, change "office" to "division" in subsections (c), (f), and (h) and change "Office of General Counsel" to "General Counsel Division" in subsections (c)(1) to reflect name changes recently made to the department's organizational structure. The amendments also revise the sunset dates of commission advisory committees that are created by statute. Section 1.82 currently provides that each statutory advisory committee is abolished December 31, 2017. This sunset date was established under Government Code, §2110.008, which authorizes a state agency to establish by rule a date on which advisory committees will automatically be abolished unless continued. The commission determines that the continued existence of its statutory advisory committees is necessary for improved communication between the department and the public. Therefore, §1.82(i) is amended to revise the sunset date to December 31, 2019.

Amendments to §1.84, Statutory Advisory Committees, subsection (c)(2) specify that the members of the port authority advisory committee shall be appointed pursuant to Transportation Code, §55.006. Senate Bill 28, 85th Legislature, Regular Session, amended §55.006, to increase the number of members of the port authority advisory committee from seven to nine, and to provide that the lieutenant governor and the speaker of the House of Representatives will each appoint one member in addition to the members appointed by the commission. Members appointed by the commission will continue to serve staggered three-year terms. Also, amendments to subsection (b)(4) change "office" to "division" to reflect name changes recently made to the department's organizational structure.

Amendments to §1.85, Department Advisory Committees, change the date that advisory committees created under that section are abolished. Section 1.85 provides for the creation of advisory committees by the commission and provides the operating procedures for those committees. Section 1.85(c) currently provides a December 31, 2017 sunset date, which was established in accordance with Government Code, §2110.008. The commission determines that each existing advisory committee created under §1.85 is necessary for improved communication between the department and the public. Therefore, amendments to §1.85(c) extend the sunset date to December 31, 2019. Also, amendments to subsection (b) change "office" to "division" to reflect name changes recently made to the department's organizational structure.

Amendments to §1.86, Corridor Advisory Committees, change the date that corridor advisory committees created under that

section are abolished. Section 1.86(e) currently provides that each advisory committee created under that section is abolished December 31, 2017. This sunset date was established in accordance with Government Code, §2110.008. The commission determines that each existing corridor advisory committee is necessary for improved communication between the department and the public. Therefore, amendments to §1.86(e) change the sunset date to December 31, 2019.

Amendments to §1.87, Corridor Segment Advisory Committees, change the date that corridor segment advisory committees created under that section are abolished. Section 1.87(e) currently provides that each corridor segment advisory committee is abolished December 31, 2017. This sunset date was established in accordance with Government Code, §2110.008. Amendments to §1.87(e) extend the sunset date for any newly created corridor segment advisory committee to December 31, 2019.

Amendments add new §1.88, Interim Report, which requires each advisory committee to file with the division of the department that is responsible for providing administrative support to that advisory committee an interim report relating to the committee's membership, structure, duties, objectives and goals, accomplishments, and scheduled activities. The executive director, or the executive director's designee, in turn will deliver a copy of the report to each commissioner. This report will assist in the commission's oversight of the work and necessity of each advisory committee.

#### FISCAL NOTE

Brian Ragland, Chief Financial Officer, has determined that for each of the first five years in which the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Marc Williams, Deputy Executive Director, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

#### PUBLIC BENEFIT AND COST

Mr. Williams has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be accuracy of the rules and improved communication between the department and the public. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses or a municipality with a population of less than 25,000 and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §1.82 and §§1.84 - 1.87 and new §1.88 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Advisory Committees." The deadline for receipt of comments is 5:00 p.m. on November 13, 2017. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

## STATUTORY AUTHORITY

The amendments and new rule are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.117, which provides the commission with the authority to establish, as it considers necessary, advisory committees on any of the matters under its jurisdiction; Transportation Code, §55.006, which requires the commission to appoint members to the port authority advisory committee; Government Code, §2110.005, which requires a state agency that establishes an advisory committee to describe by rule the manner in which the committee will report to the agency; and Government Code, §2110.008, which provides that, if a state agency committee designates the date on which an advisory committee will automatically be abolished or changes such a date, the designation or change must be by rule.

## CROSS REFERENCE TO STATUTE

Government Code, Chapter 2110, and Transportation Code, §55.006 and §201.117.

### §1.82. *Statutory Advisory Committee Operations and Procedures.*

(a) **Applicability.** This section applies to statutory advisory committees and governs the operation of statutory advisory committees unless it is superseded by a specific provision in §1.84 of this subchapter (relating to Statutory Advisory Committees).

(b) **Election of officers and terms of members.**

(1) Unless otherwise specified with regard to a particular committee, each committee shall elect a chair and vice-chair by majority vote of the members of the committee. The chair and vice-chair shall each be elected for a term of not less than one year and not more than two years. Once elected, the chair and vice-chair may stand for reelection, without limit on the number of consecutive terms.

(2) Members shall serve on an advisory committee until new members are appointed.

(c) **Meetings.**

(1) **Meeting requirements.** The division [office] designated for an advisory committee under subsection (f) of this section shall submit to the Office of the Secretary of State notice of a meeting of the advisory committee at least 10 days before the date of the meeting. The notice must provide the date, time, place, and subject of the meeting. A meeting of an advisory committee must be open to the public. An advisory committee will follow the agenda set for each meeting under paragraph (2) of this subsection. Filing of notice of meetings with the Office of the Secretary of State shall be coordinated through the department's [Office of] General Counsel Division.

(2) **Scheduling of meetings.** Meeting dates, times, places, and agendas will be set by the division [office] designated under subsection (f) of this section. Any committee member may suggest the need for a meeting or an agenda item, provided that the committee may only discuss items that are within the committee's and the department's jurisdiction. The division [office] designated under subsection (f) of this section will provide notice of the time, date, place, and purpose of meetings to the members, by mail, email, telephone or any combination of the three, at least 10 calendar days in advance of each meeting. All meetings must take place in Texas and must be held in a location that is readily accessible to the general public.

(3) **Quorum.** A majority of the membership of an advisory committee, including the chairman, constitutes a quorum. The committee may act only by majority vote of the members present at the meeting.

(4) **Removal.** A committee member may be removed at any time without cause by the person or entity that appointed the member or by that person's or entity's successor.

(5) **Parliamentary procedure.** Parliamentary procedures for all committee meetings shall be in accordance with the latest edition of Robert's Rules of Order, except that the chair may vote on any action as any other member of the committee, and except to the extent that Robert's Rules of Order are inconsistent with any statute or this subchapter.

(6) **Record.** Minutes of all committee meetings shall be prepared and filed with the commission. The complete proceedings of all committee meetings must also be recorded by electronic means.

(7) **Public information.** All minutes, transcripts, and other records of the advisory committees are records of the commission and as such may be subject to disclosure under the provisions of Government Code, Chapter 552.

(d) **Reimbursement.** The department may, if authorized by law and the executive director, reimburse a member of a committee for reasonable and necessary travel expenses. Current rules and laws governing reimbursement of expenses for state employees shall govern reimbursement of expenses for advisory committee members.

(e) **Conflict of interest.** Advisory committee members are subject to the same laws and policies governing ethical standards of conduct as those for commission members and employees of the department.

(f) **Administrative support.** For each advisory committee, the executive director will designate a division [an office] of the department that will be responsible for providing any necessary administrative support essential to the functions of the committee.

(g) **Advisory committee recommendations.** In developing department policies, the commission will consider the recommendations submitted by advisory committees.

(h) **Manner of reporting.**

(1) The division [office] designated under subsection (f) of this section shall, in writing, report to the commission an official action of a statutory advisory committee, including any advice and recommendations, prior to commission action on the issue. The chair of the advisory committee or the chair's designee will also be invited by the department to appear before the commission prior to commission action on a posted agenda item to present the committee's advice and recommendations.

(2) In the event a written report cannot be furnished to the commission prior to commission action, the report may be given orally, provided that a written report is furnished within 10 days of commission action.

(i) **Duration.** Except as otherwise specified in this subchapter, each statutory advisory committee is abolished December 31, 2019 [2017], unless the commission amends its rules to provide for a different date.

### §1.84. *Statutory Advisory Committees.*

(a) **Aviation Advisory Committee.**

(1) **Purpose.** Created pursuant to Transportation Code, §21.003, the Aviation Advisory Committee provides a direct link for general aviation users' input into the Texas Airport System. The committee provides a forum for exchange of information concerning the users' view of the needs and requirements for the economic development of the aviation system. The members of the committee are an avenue for interested parties to utilize to voice their concerns and have

that data conveyed for action for system improvement. Additionally, committee members are representatives of the department and its Aviation Division, able to furnish data on resources available to the Texas aviation users.

(2) Membership. The commission will appoint the members of the Aviation Advisory Committee to staggered terms of three years with two members' terms expiring August 31 of each year. A committee member must have five years of successful experience as an aircraft pilot, an aircraft facilities manager, or a fixed-base operator.

(3) Duties. The committee shall:

(A) periodically review the adopted capital improvement program;

(B) advise the commission on the preparation and adoption of an aviation facilities development program;

(C) advise the commission on the establishment and maintenance of a method for determining priorities among locations and projects to receive state financial assistance for aviation facility development;

(D) advise the commission on the preparation and update of a multi-year aviation facilities capital improvement program; and

(E) perform other duties as determined by order of the commission.

(4) Meetings. The committee shall meet once a calendar year and such other times as requested by the Aviation Division Director.

(5) Rulemaking. Section 1.83 of this subchapter (relating to Rulemaking) does not apply to the Aviation Advisory Committee.

(b) Public Transportation Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §455.004, the Public Transportation Advisory Committee provides a forum for the exchange of information between the department, the commission, and committee members representing the transit industry and the general public. Advice and recommendations expressed by the committee provide the department and the commission with a broader perspective regarding public transportation matters that will be considered in formulating department policies.

(2) Membership. Members of the Public Transportation Advisory Committee shall be appointed and shall serve pursuant to Transportation Code, §455.004.

(3) Duties. The committee shall:

(A) advise the commission on the needs and problems of the state's public transportation providers, including recommending methods for allocating state public transportation funds if the allocation methodology is not specified by statute;

(B) comment on proposed rules or rule changes involving public transportation matters during their development and prior to final adoption unless an emergency requires immediate action by the commission;

(C) advise the commission on the implementation of Transportation Code, Chapter 461; and

(D) perform other duties as determined by order of the commission.

(4) Meetings. The committee shall meet as requested by the commission or the division ~~[office]~~ designated under §1.82(f) of

this subchapter (relating to Statutory Advisory Committee Operations and Procedures).

(5) Public transportation technical committees.

(A) The Public Transportation Advisory Committee may appoint one or more technical committees to advise it on specific issues, such as vehicle specifications, funding allocation methodologies, training and technical assistance programs, and level of service planning.

(B) A technical committee shall report any findings and recommendations to the Public Transportation Advisory Committee.

(c) Port Authority Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §55.006, the purpose of the Port Authority Advisory Committee is to provide a forum for the exchange of information between the commission, the department, and committee members representing the maritime port industry in Texas and others who have an interest in maritime ports. The committee's advice and recommendations will provide the commission and the department with a broad perspective regarding maritime ports and transportation-related matters to be considered in formulating department policies concerning the Texas maritime port system.

(2) Membership. Members shall be appointed pursuant to Transportation Code, §55.006. Members appointed by the commission serve staggered three-year terms unless removed sooner at the discretion of the commission.

~~[(A) The commission will appoint seven members to staggered three-year terms unless removed sooner at the discretion of the commission.]~~

~~[(B) The commission will appoint:]~~

~~[(i) one member from the Port of Houston Authority of Harris County;]~~

~~[(ii) (i) three members from maritime ports located on the upper Texas coast; and]~~

~~[(iii) three members from maritime ports located on the lower Texas coast.]~~

(3) Duties. The committee shall:

(A) prepare a maritime port mission plan;

(B) review each project eligible to be funded under Transportation Code, Chapter 55, and make recommendations for approval or disapproval to the department;

(C) advise the commission and the department on matters relating to port authorities; and

(D) not later than December 1 of each even-numbered year:

(i) prepare and submit a report on Texas maritime ports, in accordance with Transportation Code, §55.007, subsections (a)(3) and (b);

(ii) prepare and submit a port capital program, in accordance with Transportation Code, §55.008.

(4) Meeting. The committee shall meet at least semiannually and such other times as requested by the commission, the executive director, or the executive director's designee. The chair may request the department to call a meeting.

(d) Border Trade Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §201.114, the Border Trade Advisory Committee provides a forum for the exchange of communications among the commission, the department, the governor, and committee members representing border trade interests. The committee's advice and recommendations will provide the governor, the commission, and the department with a broad perspective regarding the effect of transportation choices on border trade in general and on particular communities. The members of the committee also provide an avenue for interested parties to express opinions with regard to border trade issues.

(2) Membership. The border commerce coordinator designated under Government Code, §772.010, shall serve as the chair of the committee. The commission will appoint the other members of the committee in accordance with Transportation Code, §201.114. The commission will appoint members to staggered three-year terms expiring on August 31 of each year, except that the commission may establish terms of less than three years for some members in order to stagger terms.

(3) Duties. The committee shall:

(A) define and develop a strategy for identifying and addressing the highest priority border trade transportation challenges;

(B) make recommendations to the commission regarding ways in which to address the highest priority border trade transportation challenges;

(C) advise the commission on methods for determining priorities among competing projects affecting border trade; and

(D) perform other duties as determined by the commission, the executive director, or the executive director's designee.

(4) Meetings. The committee shall meet at least once a calendar year. The dates and times of meetings shall be set by the committee. The committee shall also meet at the request of the department.

(5) Rulemaking. Sections 1.82(i) and 1.83 of this subchapter do not apply to the Border Trade Advisory Committee.

§1.85. *Department Advisory Committees.*

(a) Creation.

(1) Project advisory committees.

(A) Purpose. The executive director may authorize a district engineer to create, by written order, an ad hoc project advisory committee composed of the following members as may be deemed appropriate by the district engineer: department staff; affected property owners and business establishments; technical experts; professional consultants representing the department; and representatives of local governmental entities, the general public, chambers of commerce, and the environmental community. A project advisory committee shall serve the purpose of facilitating, evaluating, and achieving support and consensus from the affected community and governmental entities in the initial stages of a transportation project. Advice and recommendations of a committee provide the department with an enhanced understanding of public, business, and private concerns about a project from the development phase through the implementation phase, thus facilitating the department's communications and traffic management objectives, resulting in a greater cooperation between the department and all affected parties during project development and construction.

(B) Duties. A project advisory committee shall:

(i) maintain community and local government communication; and

(ii) respond in a timely fashion to affected parties' concerns about project development and construction.

(C) Manner of reporting. A project advisory committee shall report its advice and recommendations to the district engineer.

(D) Duration. A project advisory committee may be abolished at any stage of project development, but in no event may a committee continue beyond completion of the project.

(2) Rulemaking advisory committees.

(A) Purpose. The commission, by order, may create ad hoc rulemaking advisory committees pursuant to Government Code, Chapter 2001, §2001.031, for the purpose of receiving advice from experts, interested persons, or the general public with respect to contemplated rulemaking.

(B) Duties. A rulemaking advisory committee shall provide advice and recommendations with respect to a specific contemplated rulemaking.

(C) Manner of reporting. A rulemaking advisory committee shall report its advice and recommendations to the division responsible for the development of the rules.

(D) Duration. A rulemaking committee shall be abolished upon final adoption of rules by the commission.

(3) Bicycle Advisory Committee.

(A) Purpose. The purpose of the Bicycle Advisory Committee is to advise the commission on bicycle issues and matters related to the Safe Routes to School Program. By involving representatives of the public, including bicyclists and other interested parties, the department helps ensure effective communication with the bicycle community, and that the bicyclist's perspective will be considered in the development of departmental policies affecting bicycle use, including the design, construction and maintenance of highways. The committee will also provide recommendations to the department on the Safe Routes to School Program.

(B) Duties. The committee shall:

(i) in accordance with Transportation Code, §201.9025, advise and make recommendations to the commission on the development of bicycle tourism trails;

(ii) provide recommendations on the selection of projects under Chapter 25, Subchapter I of this title (relating to Safe Routes to School Program); and

(iii) review and make recommendations on items of mutual concern between the department and the bicycling community.

(C) Manner of reporting. The committee shall report its advice and recommendations to the commission, except for matters relating to the Safe Routes to School Program. Under the Safe Routes to School Program the committee shall reports its recommendations to the director of the division responsible for administering the program.

(4) Freight Advisory Committee.

(A) Purpose. The purpose of the Freight Advisory Committee is to serve as a forum for discussion regarding transportation decisions affecting freight mobility and promote the sharing of information between the private and public sectors on freight issues. The committee's advice and recommendations will provide the department with a broad perspective regarding freight transportation matters and assist in identifying potential freight transportation facilities that are critical to the state's economic growth and global competitiveness.

(B) Duties. The committee shall:

(i) provide advice regarding freight-related priorities, issues, projects and funding needs;

(ii) make recommendations regarding the creation of statewide freight transportation policies and performance measures;

(iii) make recommendations regarding the development of a comprehensive and multimodal statewide freight transportation plan; and

(iv) communicate and coordinate regional priorities with other organizations as requested by the department.

(C) Manner of reporting. The committee shall report its advice and recommendations to the executive director or a department employee designated by the executive director and shall make reports to the commission as requested.

(b) Operating procedures.

(1) Membership. Except as otherwise specified in this section, an advisory committee shall be composed of not more than 24 members to be appointed by the division [office] or official to whom the committee is to report. When applicable to the purpose and duties of the committee, the membership shall provide a balanced representation between:

(A) industries or occupations regulated or directly affected by the department; and

(B) consumers of services provided either by the department or by industries or occupations regulated by the department.

(2) Meetings.

(A) An advisory committee shall meet once a calendar year and at such other times as requested by the division [office] to which it reports.

(B) A majority of the membership of an advisory committee constitutes a quorum. A committee may take formal action only by majority vote of its membership.

(3) Officers. Each committee shall elect a chair and vice-chair by majority vote of the members of the committee.

(c) Duration. Except as otherwise specified in this section, a committee created under this section is abolished December 31, 2019 [2017], unless the commission amends its rules to provide for a different date.

(d) Reimbursement. The department may, if authorized by law and the executive director, reimburse a member of a committee for reasonable and necessary travel expenses. Current rules and laws governing reimbursement of expenses for state employees shall govern reimbursement of expenses for advisory committee members.

#### *§1.86. Corridor Advisory Committees.*

(a) Purpose. The commission by order may create an advisory committee for any other corridor. The purpose of an advisory committee is to facilitate and achieve support and consensus from affected communities, governmental entities, and other interested parties in the planning of transportation improvements in the corridor for which it is created and in the establishment of development plans for that corridor. An advisory committee's advice and recommendations will provide the department with an enhanced understanding of public, business, and private concerns about the corridor for which it is created, facilitating the department's communications and project development objectives and resulting in greater cooperation between the department and all affected parties during project planning and development.

(b) Membership. An advisory committee may be composed of members of the following groups as deemed appropriate by the commission: affected property owners and owners of business establishments; technical experts; representatives of local governmental entities; members of the general public; economic development officials; chambers of commerce officials; members of the environmental community; department staff; and professional consultants representing the department.

(c) Duties. An advisory committee shall report to the executive director its advice and recommendations on transportation improvements to be made in the corridor for which it is created, including facilities to be included in a development plan for that corridor and upgrades and other improvements to be made to existing facilities located in that corridor, and on other corridor level planning and development matters as requested by the department. The corridor advisory committee may also provide information to, coordinate with, or request information relating to the planning and development of a segment of the corridor from a corridor segment advisory committee established under §1.87 of this subchapter (relating to Corridor Segment Advisory Committees). In developing advice and recommendations, an advisory committee will evaluate economic, political, societal, and demographic population trends affecting transportation, and will consider existing facilities, upgrades to existing facilities, new or planned facilities, multimodal solutions, and available financing options.

(d) Additional requirements. An advisory committee is subject to the requirements for operating procedures and reimbursement of expenses applicable to a department advisory committee under §1.85 of this subchapter (relating to Department Advisory Committees).

(e) Duration. An advisory committee created under this section is abolished December 31, 2019 [2017], unless the commission amends its rules to provide for a different date.

#### *§1.87. Corridor Segment Advisory Committees.*

(a) Purpose. The commission by order may create a corridor segment advisory committee to assist the department in the transportation planning process for any highway corridor. The purpose of an advisory committee is to facilitate and achieve support and consensus from affected communities, governmental entities, and other interested parties in the planning of transportation improvements in the segment of a corridor for which it is created and in the establishment of development plans for that segment. An advisory committee's advice and recommendations will provide the department with an enhanced understanding of public, business, and private concerns about the segment for which it is created, facilitating the department's communications and project development objectives and resulting in greater cooperation between the department and all affected parties during project planning and development.

(b) Membership. A corridor segment advisory committee consists of the following members:

(1) one member appointed by the county judge of each county in which the proposed segment may be located, representing the general public within the county;

(2) one member appointed by each metropolitan planning organization within whose boundaries all or part of the proposed segment may be located, representing the general public within the metropolitan planning organization;

(3) additional members representing the general public within cities designated by the commission, in which all or part of a proposed segment may be located, each of whom will be appointed by the mayor of a designated city; and

(4) additional members, each of whom:

(A) will represent, and be appointed by the governing body of, a port, chamber of commerce, economic development council or corporation, or other organization that has an interest in transportation, within whose service area all or part of a proposed segment may be located and that is designated by the commission to appoint a member of the committee; or

(B) is an individual who resides or has a business in the area in which the segment may be located, has an interest in transportation, and is appointed to the committee by the commission.

(c) Duties. An advisory committee shall report to the executive director its advice and recommendations on transportation improvements to be made in the segment of a corridor for which it is created, including facilities to be included in a development plan for that segment and upgrades and other improvements to be made to existing facilities located in that segment, and other segment level planning, development, and financing matters as requested by the department. A corridor segment advisory committee may provide information to, coordinate with, or request information from a corridor advisory committee created under §1.86 of this subchapter (relating to Corridor Advisory Committees). In developing advice and recommendations, a corridor segment advisory committee will evaluate economic, political, societal, and demographic population trends affecting transportation, and will consider existing facilities, upgrades to existing facilities, new or planned facilities, multimodal solutions, and available financing options.

(d) Additional requirements. A corridor segment advisory committee is subject to the requirements for operating procedures applicable to a department advisory committee under §1.85 of this subchapter (relating to Department Advisory Committees).

(e) Duration. A corridor segment advisory committee may be abolished at any time by the commission, but in no event may a committee continue beyond completion of the segment for which the committee is created. Except as otherwise specified in this paragraph, a committee created under this section is abolished December 31, 2019 [2017], unless the commission amends its rules to provide for a different date.

§1.88. Interim Report.

(a) In addition to other reports required by this subchapter, each advisory committee created by statute, or by the department or commission, to provide advice or recommendations on matters within the jurisdiction of the commission shall file, before August 31, 2018, with the division designated as responsible for providing administrative support to that advisory committee, a report described by this section. The executive director, or the executive director's designee, will deliver a copy of the report to each commissioner.

(b) The report must clearly state:

- (1) the advisory committee's membership and structure;
- (2) the objectives of the committee;
- (3) the goals of the committee and an assessment of the committee's work to meet each goal;
- (4) a list of scheduled meetings of the committee;
- (5) a list of each work product that the committee is scheduled to provide to the commission or department, as applicable, and the date on which the work product is scheduled to be delivered; and
- (6) any recommendations for changes to commission rules related to the membership or structure of the committee or matters within the committee's assigned duties.

(c) The division designated as responsible for providing administrative support to an advisory committee will assist that committee in providing the report required under this section.

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

Filed with the Office of the Secretary of State on September 28, 2017.

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Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
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For further information, please call: (512) 463-8630



## CHAPTER 27. TOLL PROJECTS

### SUBCHAPTER G. OPERATION OF DEPARTMENT TOLL PROJECTS

#### 43 TAC §27.82

The Texas Department of Transportation (department) proposes amendments to §27.82, concerning Toll Operations.

#### EXPLANATION OF PROPOSED AMENDMENTS

Senate Bill 312, 85th Legislature, Regular Session, requires multiple changes to the department's toll collection and enforcement procedures, specifically, the pay-by-mail process, in which customers receive an invoice for payment of tolls after using a department toll project.

The legislation created new Transportation Code, §228.0547, which provides that a person who receives an invoice from the department for the use of a toll project shall, not later than the due date specified in the invoice, pay the amount owed or send a written request to the department for a review of the toll assessments contained in the invoice. If a person fails to pay or request a review of the toll assessments, the department may add an administrative fee, not to exceed \$6, to the amount the person owes. The department must set the administrative fee by rule in an amount that does not exceed the cost of collecting the toll, and may not charge a person more than \$48 in administrative fees in a 12-month period. These provisions take effect on March 1, 2018.

Amendments to §27.82(e) provide that the owner or lessee of a vehicle who fails to pay the amount owed as stated on an invoice may be charged an administrative fee of \$4 per unpaid invoice. In determining the amount of the administrative fee, the department considered the incremental cost of collecting a pay-by-mail transaction, the number of transactions estimated to be included on each invoice, and the anticipated timing of the payment by the customer. The department then compared the estimated fees to be collected to the estimated incremental cost. Using this methodology, and conservative projections and estimates, the department determined that a range of \$4 to \$5 per invoice was justified. It should be noted that lost toll revenue was not considered in the cost analysis, although that factor was considered during the development of the department's current fee schedule. If lost toll revenue had been considered, the cost would be significantly higher. Finally, the department considered

customer understanding and acceptance of the new fee structure. Since the statutory cap is set at \$48 per 12-month period, a level fee amount of \$4 per invoice is the easiest structure to understand, implement, and administer. If the department implemented a higher administrative fee, there could potentially be several months of a 12-month period where the fee could not be charged due to the \$48 cap. This situation would be difficult for customer service representatives to explain and challenging for customers to understand.

Amendments add §27.82(h) to address requirements for the new toll assessment review process. An owner or lessee may request a toll assessment review, in writing, prior to the due date specified in the invoice. If, after review, the department determines that the tolls were assessed correctly, the customer will be responsible for paying the total amount as stated in the invoice. If the department determines that any of the tolls were assessed incorrectly, the department will provide the customer with updated balance information. If the customer fails to pay the amount owed by the due date specified in the next invoice, the department may charge the customer an administrative fee. The written request must be mailed to the department's customer service center or submitted through [www.txtag.org](http://www.txtag.org). The amendments also outline specific information that must be provided by the customer to initiate the review process.

#### FISCAL NOTE

Brian Ragland, Chief Financial Officer, has determined that for each of the first five years in which the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Richard Nelson, Director, Toll Operations Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

#### PUBLIC BENEFIT AND COST

Mr. Nelson has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be a simplified administrative fee structure for customers who use the department's toll projects. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses or a municipality with a population of less than 25,000 and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §27.82 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to [RuleComments@txdot.gov](mailto:RuleComments@txdot.gov) with the subject line "Toll Ops Rules." The deadline for receipt of comments is 5:00 p.m. on November 13, 2017. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

#### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §228.0547, which requires the department to set the administrative fee by rule.

#### CROSS REFERENCE TO STATUTE

Transportation Code, §§201.101 and 228.0547.

#### §27.82. Toll Operations.

(a) Toll policies. The department shall adopt policies relating to toll collection and enforcement and the operation of customer service centers. The policies will authorize all fees imposed under this section to be paid by credit card, debit card not requiring the entry of a personal identification number (PIN), money order, personal or cashier's check, or cash. In adopting those policies, the department shall consider:

- (1) whether those policies will provide ease of use by travelers and maximize mobility on toll projects;
- (2) whether those policies will provide a high level of customer service;
- (3) the requirements of project bond covenants;
- (4) cost of operations;
- (5) whether those policies will facilitate the auditing of customer service center operations and the marketing of toll projects; and
- (6) whether those policies will maximize the preservation of revenue streams.

(b) Exception. Toll collection and enforcement policies adopted by the department are not subject to the requirements of §5.10 of this title (relating to Collection of Debts).

(c) Customer account fees. The department may charge fees to customers for purposes of establishing and administering electronic toll collection customer accounts. The commission by minute order will establish customer account fees. In establishing customer account fees, the commission will consider the cost of operations, including the estimated cost to the department for labor, materials, storage, and bank fees, as well as the requirements of project bond covenants. Tag fees may be temporarily waived by the department for the purposes of introducing motorists to toll projects and attracting new customers. Customer account fees may include fees for the following items:

- (1) standard tags;
- (2) specialty tags;
- (3) mailed or faxed account statements;
- (4) account maintenance;
- (5) checks returned for insufficient funds; and
- (6) account reactivation.

(d) Toll rates. Except as provided in subsections (f) and (g) of this section, the commission by minute order will establish toll rates for the use of a toll project. In setting toll rates, the commission will consider:

- (1) the results of traffic and revenue studies and any schedule of toll rates established in a traffic and revenue report;
- (2) the requirements of project bond covenants; and
- (3) vehicle classifications, type and location of the facility, and similar criteria that apply to a specific project.

(e) Administrative fees. Except as provided in subsection (f) of this section, the owner or lessee of a vehicle who fails to pay the amount owed as stated in an invoice from the department for the use of a toll project may be charged an administrative fee of \$4 per unpaid invoice. [the commission by minute order will establish administrative fees charged to owners and lessees of vehicles that use a toll project without paying the proper toll. The total of all administrative fees charged for each uncollected toll may not exceed \$100.] Administrative fees may be suspended by the department if a violator agrees to open a funded account and to maintain that account in good standing, and may be waived if the account is maintained in good standing for the period of time determined by the department. [In establishing an administrative fee, the commission will consider the estimated cost to the department to collect unpaid tolls on toll projects, which will be determined by:]

and] [(1) the existing or estimated violation rate on toll projects;

and] [(2) the estimated number of violations that the department will collect.]

(f) Operating agreements. The commission may authorize a private entity under contract to operate a department toll project to set toll rates for the use of the toll project and to establish an administrative fee charged to owners of vehicles that use the toll project without paying the proper toll, if:

(1) the private entity is required under the contract to submit to the department for approval:

(A) the methodology for:

(i) the setting of tolls;

(ii) increasing the amount of the tolls; and

(iii) the setting of an administrative fee to be imposed to recover the cost of collecting an unpaid toll; and

(B) any proposed change in an approved methodology for the setting of a toll or an administrative fee;

(2) the private entity will operate the toll project under a comprehensive development agreement or under a contract resulting from a procurement under §27.83 of this chapter (relating to Contracts to Operate Department Toll Projects) that provides an operational concession to the private entity; and

(3) the commission approves the award of the contract to the private entity.

(g) Dynamic pricing. The executive director will establish toll rates for the use of a toll project where dynamic pricing is in effect. In setting the toll rates, the executive director will consider vehicle classifications, type and location of the facility, regional policies, and similar criteria that apply to a specific project. The toll rates may be established through the approval of an algorithm or other methodology designed to maintain a free-flowing level of traffic on one or more lanes of the toll project.

(h) Toll Assessment Review. An owner or lessee may, not later than the due date specified in the invoice from the department, send a written request to the department for a review of the toll assessments contained in the invoice. If, after a review, the department determines that the tolls were assessed correctly, the customer will be responsible for paying the amount owed as stated in the invoice. If the department determines that any of the tolls were assessed incorrectly, the department will provide the customer with an updated balance due. If the customer fails to pay the amount owed by the due date specified in the first invoice after the review, the department may charge the customer

an administrative fee, as described in subsection (e) of this section. A request under this subsection must be mailed to the department's customer service center at 12719 Burnet Road, Austin, Texas 78727, or submitted through [www.txtag.org](http://www.txtag.org), and must include the following information:

(1) the customer's name, address, and contact information;

(2) the make, model, year, and license plate number of the vehicle associated with the tolls under review;

(3) the date, time, and location of the tolls under review;

(4) the reason that the tolls are being disputed; and

(5) if the dispute involves vehicle ownership, the date that the person purchased or sold the vehicle, as applicable.

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

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Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: November 12, 2017

For further information, please call: (512) 463-8630



## CHAPTER 28. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

### SUBCHAPTER H. HIDALGO COUNTY

#### REGIONAL MOBILITY AUTHORITY PERMITS

##### 43 TAC §28.102

The Texas Department of Transportation (department) proposes amendments to §28.102, concerning Authority's Powers and Duties.

##### EXPLANATION OF PROPOSED AMENDMENTS

These amendments grant the Hidalgo County Regional Mobility Authority (HCRMA) additional authority to issue permits for the operation of oversize/overweight vehicles on a designated highway within the county and clarify the limits of that authority. Transportation Code, §623.363(a)(2) authorizes the Texas Transportation Commission (commission) to designate additional routes for which HCRMA may issue oversize and overweight permits. The statute requires that the commission consult with HCRMA prior to the designation. The department worked with HCRMA to identify additional routes that would benefit the HCRMA permitting process.

Amendments to §28.102, Authority's Powers and Duties, clarify that the purpose of the rule is to authorize the issuance of permits by the HCRMA for state-owned roads listed under Transportation Code, §623.363 and those routes identified and designated by the commission. The amendments add an additional route designated by the commission for which HCRMA is authorized to issue permits for the operation of oversize/overweight vehicles. The added route is: U.S. Highway 83 Business between its intersection with South Pleasantview Drive and the intersec-

tion of South Bridge Avenue. This addition expands HCRMA's permitting authority for the operation of the roadways within its jurisdiction and allows HCRMA to provide more complete service to the motor carriers using the permits within Hidalgo County.

#### FISCAL NOTE

Brian Ragland, Chief Financial Officer, has determined that for each of the first five years in which the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. The permit fee collected by HCRMA will be used to cover the cost of any additional damage to the roadway added by this amendment. HCRMA has the authority to set the permit fee to accommodate all expected maintenance costs for state highways used by the permit holders.

C. Michael Lee, P.E., Director, Maintenance Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

#### PUBLIC BENEFIT AND COST

Mr. Lee has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be more efficient freight transportation and a potential for vehicle reduction. There are no anticipated economic costs for persons required to comply with the section as proposed. There will be no adverse economic effect on small businesses or a municipality with a population of less than 25,000 and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §28.102 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Hidalgo County RMA." The deadline for receipt of comments is 5:00 p.m. on November 13, 2017. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

#### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §623.369 authorizing the commission to adopt rules necessary to implement Subchapter S, Regional Mobility Authority Permits.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 623, Subchapter S.

§28.102. *Authority's Powers and Duties.*

(a) Authority authorized to issue permits. The authority may issue a permit and collect a fee for the movement within the territory of the authority of a vehicle or vehicle combination that exceeds the vehicle size or weight limits specified by Transportation Code, Chapter 621, Subchapters B and C, but does not exceed loaded dimensions of 12 feet wide, 16 feet high, and 110 feet long, and does not exceed 125,000 pounds gross weight for travel on:

(1) the state-owned roads designated by Transportation Code, §623.363;

(2) US 281/Military Highway from Spur 29 to FM 1015;

(3) FM 1015 from US 281/Military Highway, south to the Progreso International Bridge;

(4) FM 2557 from US 281/Military Highway to Interstate 2;

(5) FM 3072 from Veterans Boulevard ("I" Road) to Cesar Chavez Road; ~~and~~

(6) US 281 (Cage Boulevard) from Spur 600 to Anaya Road; ~~and~~[-]

(7) U.S. Highway 83 Business from South Pleasantview Drive to South Bridge Avenue.

(b) Surety bond. The authority shall obtain a surety bond in the amount set by the department to cover the estimated annual maintenance costs of roads identified in subsection (a) of this section. The department will draw on the bond only if revenue collected from permits issued under this subchapter is insufficient to pay for those costs and the authority fails to reimburse the department for those costs. The estimated maintenance costs will be based on the amortized cost of the identified roads, projected regular maintenance and operations costs, and the bridge consumption costs associated with the movement of overweight and oversize vehicles issued a permit by the authority.

(c) Verification of permits. The authority shall provide law enforcement and department personnel access to any of the authority's property to verify compliance with this subchapter by the authority or another person.

(d) Training. The authority shall provide or obtain any training necessary for personnel to issue permits under this subchapter. The department may provide assistance with training on request by the authority.

(e) Accounting. The department shall develop accounting procedures related to permits issued under this subchapter with which the authority must comply for revenue collections and any payment made to the department under subsection (i) of this section.

(f) Audits. The department may conduct audits annually or at the direction of the executive director of all permit issuance activities of the authority. To insure compliance with applicable law, audits at a minimum will include a review of all permits issued, financial transaction records related to permit issuance and vehicle scale weight tickets, and the monitoring of personnel issuing permits under this subchapter.

(g) Revocation of authority to issue permits. If the department determines as a result of an audit that the authority is not complying with this subchapter or other applicable law, the executive director will issue a notice to the authority allowing 30 days for the authority to correct any non-compliance issue. If the department determines that, after that 30-day period, the authority has not corrected the issue, the executive director may revoke the authority's authority to issue permits under this subchapter. The authority may appeal to the commission in writing the revocation of its authority under this subsection. If the authority appeals the revocation, the authority's authority to issue permits under this subchapter remains in effect until the commission makes a final decision on the appeal.

(h) Fees. Fees under this subchapter may be collected, deposited, and used only as provided by Transportation Code, §623.364. The authority may determine acceptable methods of payment. All fees transmitted to the department must be in U.S. currency. On revocation

of the authority's authority to issue permits, termination of the maintenance contract entered into under subsection (i) of this section, or expiration of this subchapter, the authority shall pay to the department all permit fees collected by the authority, less allowable administrative costs.

(i) Maintenance contract. The authority shall enter into a contract with the department for the maintenance of roads identified in subsection (a) of this section for which a permit may be issued under this subchapter. The contract will cover routine maintenance, preventive maintenance, and total reconstruction of the roadway and bridge structures, as determined by the department to maintain the current level of service, and may include other types of maintenance.

(j) Reporting. The authority shall provide monthly and annual reports to the department's Finance Division regarding all permits issued and all fees collected during the period covered by the report. The report must be in a format approved by the department.

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

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