

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 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 251. 9-1-1 SERVICE--STANDARDS

1 TAC §§251.1, 251.3, 251.7

The Commission on State Emergency Communications (CSEC) proposes amendments to §§251.1, 251.3, and 251.7. The amendments are being proposed as a result of CSEC's statutory review of its Chapter 251 rules as required by Texas Government Code §2001.039. CSEC's notice of intent to review its Chapter 251 rules was published in the March 16, 2018, issue of the *Texas Register* (43 TexReg 1677).

BACKGROUND AND PURPOSE

CSEC proposes amendments to §251.1, relating to Regional Strategic Plans for 9-1-1 Service; §251.3, relating to Use of Revenue in Certain Counties, and §251.7, relating to Guidelines for Implementing Integrated Services (Title 1, Part 12, Tex. Admin. Code Chapter 251).

SECTION-BY-SECTION EXPLANATION

The proposed amendments to §251.1 add the full name for Telecommunication Device for the Deaf (TDD) and delete TTY in §251.1(d)(6), as the two are used interchangeably: a TTY (a teletypewriter) is a type of TDD and is included in that category. The proposed amendment also adds, in §251.1(d)(9)(D), a redundancy requirement for regional strategic plans for network connections from the Host CPE Location to a Public Safety Answering Point (PSAP)--this change updates the list of redundancies already required to be included in a Regional Planning Commission's (RPC's) regional strategic plan.

The proposed amendments to §251.3 clarify in §251.3(a) that the rule authorizes an RPC to use unexpended 9-1-1 fee and equalization surcharge revenues in certain counties; update §251.3(b) to reflect a change in the name of the Texas State Data Center; and clarify the requirements in §251.3(c) for requesting use of revenue--specifically that a request must include a description of the design of the 9-1-1 system and, for each PSAP or other answering point listed, include a written request from the PSAP or other answering point that specifies how the funds will be used and that funds received will be expended as specified.

The proposed amendments to §251.7 clarify in §251.7(a) that a 9-1-1 call refers to both a voice or Text-to-911 call; and add clauses (ix) and (x) to §251.7(c)(1)(A) Short Message Service (SMS) and Real Time Text (RTT), respectively, to be included as eligible integrated services.

FISCAL NOTE

Ms. Kelli Merriweather, CSEC Executive Director, has determined that for each year of the first five fiscal years (FY) that amended §§251.1, 251.3, and 251.7 are in effect there will be no cost implications to the state or local governments as a result of enforcing or administering the amended sections.

PUBLIC BENEFITS AND COSTS

Ms. Merriweather has determined that for each year of the first five years the amended section is in effect, the public benefits anticipated as a result of the proposed amendments will be to provide RPCs clarification as to redundancies required for primary PSAPs and requirements for the use of revenue in certain counties--including additional information required for amending a regional strategic plan; information required for amending a regional strategic plan; and inclusion of two instant messaging (*i.e.*, texting) platforms (SMS and RTT) as eligible integrated services to further the advancement of emergency call-taking capabilities.

LOCAL EMPLOYMENT IMPACT STATEMENT

CSEC has determined that this proposal does not directly affect a local economy and therefore has not drafted a local employment impact statement as would otherwise be required under Administrative Procedures Act §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

CSEC has determined that during the first five years the proposed rule would be in effect it does not: (a) create or eliminate a government program; (b) require the creation of new employee positions or the elimination of existing employee positions; (c) require an increase or decrease in future legislative appropriations to the agency; (d) require an increase or decrease in fees paid to the agency; (e) does not create a new regulation; (f) expand, limit, or repeal an existing regulation; (g) increase or decrease the number of individuals subject to the rule's applicability; and (h) positively or adversely affect this state's economy.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

CSEC has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225.

SMALL, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

In accordance with Government Code §2006.002(c), CSEC has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as the rules being proposed affect only CSEC's administration of the state 9-1-1 program implemented by the RPCs. Accordingly, CSEC has neither prepared an economic impact statement or regulatory flexibility analysis, nor has it contacted legislators in any rural communities regarding this proposal.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted in writing c/o Patrick Tyler, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942, by facsimile to (512) 305-6937, or by email to patrick.tyler@csec.texas.gov. Please include "Rulemaking Comments" in the subject line of your letter, fax, or email. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATEMENT OF AUTHORITY

The amended sections are proposed pursuant to Health and Safety Code Chapter 771, §§771.051, 771.052, 771.055, 771.056, 771.057, 771.0751, and 771.078.

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

§251.1. *Regional Strategic Plans for 9-1-1 Service.*

(a) Purpose. The purpose of this rule is to establish a framework for a Regional Planning Commission (RPC) to use in the development and submission of a regional strategic plan for 9-1-1 service, or amendments thereto, pursuant to Health and Safety Code §§771.055 - 771.057. A regional strategic plan will, at a minimum, include the elements and subsections required by statute, this rule, and Commission Program Policy Statements.

(b) Regional Strategic Plan Scope. A regional strategic plan must address the entire geographic area within the boundaries of the RPC's 9-1-1 service area. A regional strategic plan must identify all participating public safety agencies and Emergency Communication Districts.

(c) Regional Strategic Plan Criteria. In addition to the elements required by Health and Safety Code §771.055, a regional strategic plan must include the following, in order:

- (1) Contingency routing plan;
- (2) Network testing plan;
- (3) Local monitoring plan;
- (4) Capital asset plan;
- (5) Network diagrams;
- (6) Database maintenance plan;
- (7) Equipment maintenance plan; and
- (8) Regional Emergency Services Internet Protocol Network (ESInet) plans.

(d) A regional strategic plan must include at least one Primary public safety answering point (PSAP) [PSAP] and the following equipment and service at all PSAPs:

- (1) Automatic Number Identification (ANI) level of service;
- (2) Automatic Location Identification (ALI) level of service;
- (3) Wireless Phase I E9-1-1 level of service;
- (4) Wireless Phase II E9-1-1 level of service;

(5) Text-to-911 service (absent a Commission-approved waiver);

(6) Telecommunication Device for the Deaf (TDD) [~~TDD~~/~~TTY~~] or TDD[~~TTY~~] compatible equipment in compliance with the Americans with Disabilities Act (ADA) and in compliance with Commission Rule 251.4, Guidelines Accessibility Equipment;

(7) A standby power supply for the 9-1-1 equipment;

(8) Forced disconnect feature to allow the PSAP to clear incoming circuits when necessary;

(9) The following must be redundant:

(A) Network connections between each service provider facility and the 9-1-1 Network Service Provider's selective router (SR);

(B) Network connections from the SR to the Primary PSAP and/or Host Customer Premises Equipment (CPE) location;

(C) Network connections from the ALI database to the Primary PSAP and/or Host CPE location;

(D) Network connections from Host CPE location to PSAP (absent a Commission-approved waiver);

(E) [~~D~~] Database routers at the Primary PSAP and/or Host CPE location;

(F) [~~E~~] Telephone sets and/or integrated ANI and ALI display call taking positions; and

(G) [~~F~~] Any other equipment essential to the 9-1-1 call and text-taking functions;

(10) A published ten-digit emergency telephone number that can accept emergency calls 24 hours a day, 7 days a week, 365 days a year and which is answered by a qualified 9-1-1 call taker;

(11) A positive response to each 9-1-1 call where either the call is answered by personnel at the PSAP or a recorded announcement provides further information; and

(12) A positive response to each Text-to-911 by personnel at the PSAP or a recorded announcement providing further information.

(e) Adding a PSAP or 9-1-1 Call Taking Positions. Requests for an increase in the number of PSAPs or 9-1-1 call taking positions within a PSAP shall be submitted as part of a regional strategic plan or amendment thereto in accordance with Commission Program Policy Statements.

(f) Closing a PSAP. Requests to close a PSAP shall be submitted as part of a regional strategic plan or amendment thereto in accordance with Commission Program Policy Statements.

(g) Contracts. Each RPC shall execute interlocal agreements between itself and each public agency or public safety agency in the RPC's region that address, at a minimum, the planning, development, operation and provision of 9-1-1 service, the use of 9-1-1 funds, and the requirements in the contracts promulgated pursuant to Commission Rule 251.12, Commission and Regional Planning Commission Contracts for 9-1-1 Service.

(h) Testing. Each RPC shall test all 9-1-1 equipment and 9-1-1 service, including Text-to-911. Testing shall occur when 9-1-1 service is implemented or equipment is installed, service or equipment is modified, and on a regular basis to ensure system reliability, including compliance with the ADA. A schedule for ongoing testing shall be developed by the RPC and shall be available to the Commission for monitoring.

(i) Performance Reporting. Each RPC shall submit financial and performance reports to the Commission at least quarterly on a schedule to be established by the Commission. The financial report shall identify actual implementation costs by county, budget allocation, and component. The performance report shall reflect the progress of implementing the region's strategic plan including, but not limited to, the status of equipment, services, and program deliverables in a format to be determined by the Commission.

§251.3. *Use of Revenue in Certain Counties.*

(a) Purpose. The purpose of this rule is to implement §771.0751 Health and Safety Code, which authorizes a Regional Planning Commission (RPC) to ~~the~~ use ~~of~~ 9-1-1 fees and surcharges in certain counties, in addition to other authorized or required uses, for any costs deemed necessary by the Commission and attributable to designing a 9-1-1 system or the establishing and operating of a public safety answering point (PSAP) or other answering point and related operations.

(b) Eligibility. The eligibility for approval of funding under this rule is as follows:

(1) A county participating in its RPC's regional strategic plan with a population of at least 1,000,000 as reported by the Texas Demographic [State Data] Center.

(2) A county participating in its RPC's regional strategic plan that has the highest population within the region as reported by the Texas Demographic [State Data] Center.

(c) Requests. Requests for funding under this rule shall be submitted by the RPC as an amendment to its regional strategic plan at fiscal year close out when all encumbrances and payables have been expended in accordance with Commission rules and Commission Program Policy Statements. The request must demonstrate that all basic regional 9-1-1 needs have been met prior to funding under this rule. The request must include a letter signed by the RPC's Executive Director authorizing the request and include (1) a description of the design of the 9-1-1 system; and/or (2) [listing] each PSAP or other answering point to receive funding and the respective amount to be received. For each PSAP or other answering point listed, a written request must be included from the PSAP or other answering point specifying how the funds will be used and that funds received will be expended as specified.

§251.7. *Guidelines for Implementing Integrated Services.*

(a) Purpose. It is the purpose of this rule to allow for the integration of appropriate technologies into the 9-1-1 call-taking equipment that enhance or facilitate the delivery of a ~~the~~ 9-1-1 call (voice or text), while providing safeguards to protect the 9-1-1 equipment from failure due to the integration of faulty or inappropriate applications.

(b) Definitions. Unless the context clearly indicates otherwise, terms contained in this rule are defined as shown in Commission Rule 252.7, Definitions.

(c) Integrated Services. A regional planning commission (RPC) shall meet the following requirements for integration:

(1) Integrated Services.

(A) Eligible Services. Personal Computer (PC) based Integrated Workstation (IWS) 9-1-1 call-taking equipment has the capability of expanding the traditional 9-1-1 Automatic Number Identification (ANI) and Automatic Location Identification (ALI) feature functionality to allow for additional public safety software applications. The Commission is supportive of such advancement in emergency services call-taking capabilities; however, 9-1-1 funds may only

be used for applications that are eligible strategic plan budget components for the purposes of the delivery of a 9-1-1 call. To ensure the integrity of 9-1-1 is maintained, only the following 9-1-1 funded and non-9-1-1 funded features are eligible integrated services:

- (i) Expanded or Supplemental Location Information;
- (ii) Call Recording and Playback;
- (iii) Paging;
- (iv) Texas Law Enforcement Teletype Services (TLETS);
- (v) Computer Aided Dispatch Gateway;
- (vi) Graphical/Mapping Displaying of Location;
- (vii) Call Handling Protocols; ~~and~~
- (viii) Information Management (MIS);~~]~~
- (ix) Short Message Service (SMS); and
- (x) Real Time Text (RTT).

(B) Other Services. Integrated services other than the above-mentioned applications must have a demonstrated applicability to the direct provisions of delivering 9-1-1 and emergency call-taking services and will require Commission approval.

(C) System Security. Operating procedures must [should] be established by the RPC, and security measures taken and demonstrated, to ensure that non-Commission-approved software applications cannot be integrated into the IWS platform. At no time should the 9-1-1 call-taking equipment permit access to the Internet.

(D) Memory Usage. Baseline memory and CPU usage of the operating system should maintain the "80/20" performance rule, thereby demonstrating that 80% of the total memory and CPU is available to the operating system applications, while 20% of the total memory and CPU remains unused. The installation and use of software should not lead to the degradation of equipment or services subsequent to the installation of the ancillary software.

(E) Testing. Prior to integrating and deploying the expanded applications onto a IWS 9-1-1 call-taking environment, the following testing must be completed according to Commission policy, to ensure the stability and reliability of the 9-1-1 system:

(i) Documented "Lab" testing shall be completed by the IWS Vendor and RPCs or Districts demonstrating the successful integration of the authorized applications. Test scenarios should include documentation of the operating system requirements, detailed functionality results as each application is integrated and evaluated independently, and load testing results of all systems operating together on the IWS workstation.

(ii) Documented "Live" testing in a PSAP shall also be completed by the IWS Vendor with cooperation and coordination by the RPC or District, demonstrating the successful integration of the authorized applications. Test scenarios should include documentation of the operating system requirements, detailed functionality results as each application is integrated and evaluated independently, and load testing results of all systems operating on the IWS workstation, as well as a standardized set of basic call-taking functions.

(F) Testing Documentation. Documentation of the testing shall be maintained by the RPC, and submitted to the Commission upon request.

(2) Graphical Display (Mapped ALI). Requirements of RPC. Prior to the implementation of graphical display of location information at a PSAP, a RPC shall meet the following requirements:

(A) Develop a digital map in accordance with standards to be determined by the Commission.

(B) Establish and adopt a database maintenance plan, including GIS data.

(C) Perform testing to ensure that the telephone number (TN) data is mapping correctly on the PSAP screen prior to implementing mapped ALI "live" at a PSAP.

(D) Submit a strategic plan amendment according to Commission policy.

(d) Applicability to Emergency Communications Districts (Districts). This rule shall apply to Districts receiving 9-1-1 Equalization Surcharge funds.

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 July 18, 2018.

TRD-201803132

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Earliest possible date of adoption: September 2, 2018

For further information, please call: (512) 305-6915



CHAPTER 252. ADMINISTRATION

1 TAC §252.2

The Commission on State Emergency Communications (CSEC) proposes amendments to 1 TAC §252.2, relating to the purchase of goods and services.

BACKGROUND, PURPOSE, AND SECTION-BY-SECTION EXPLANATION

The proposed amendments to §252.2 are to update the adoption by reference of the specific rules of the Texas Comptroller of Public Accounts (Comptroller) relating to the state Historically Underutilized Business (HUB) program. The amendments are to reflect the Comptroller's recent reorganizing and renumbering of its rules, including its HUB rules. Adoption of the Comptroller's HUB rules is required of a state agency by Government Code §2161.003. In addition, references to Comptroller §20.82(d)(1) and §20.82(d)(4) have been added to make clear the application of HUB rules to delegated purchase authority for goods and services, respectively. References to §282.286 and §282.287 have been added as they incorporate the HUB reporting requirements in Government Code §2161.002 and §2161.122.

FISCAL NOTE

Kelli Merriweather, CSEC's executive director, has determined that for each year of the first five fiscal years (FY) that amended §252.2 is in effect there will be no cost implications to the state or local governments as a result of enforcing or administering the amended sections. There are no costs associated with amending the rule to update the referenced Comptroller's rules.

PUBLIC BENEFITS AND COSTS

Ms. Merriweather has determined that for each year of the first five years the amended section is in effect, the public benefits anticipated as a result of the proposed revision will be to accurately incorporate by reference the Comptroller's HUB rules. There are no costs to the public associated with updating the referenced Comptroller's rules or adding references to the Comptroller's HUB reporting and delegated purchase rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

CSEC has determined that this proposal does not directly affect a local economy and therefore has not drafted a local employment impact statement as would otherwise be required under Administrative Procedure Act §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

CSEC has determined that during the first five years the proposed rule would be in effect it does not: (a) create or eliminate a government program; (b) require the creation of new employee positions or the elimination of existing employee positions; (c) require an increase or decrease in future legislative appropriations to the agency; (d) require an increase or decrease in fees paid to the agency; (e) does not create a new regulation; (f) expand, limit, or repeal an existing regulation; (g) increase or decrease the number of individuals subject to the rule's applicability; and (h) positively or adversely affect this state's economy.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

CSEC has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225.

SMALL, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

In accordance with Government Code §2006.002(c), CSEC has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as the proposed rule updates the numbers of the rules adopted by reference in the rule to align with the Comptroller's renumbered HUB rules; and incorporates by reference the Comptroller's HUB reporting and delegated purchases rules. The only entity affected is CSEC. Accordingly, CSEC has neither prepared an economic impact statement or regulatory flexibility analysis, nor has it contacted legislators in any rural communities regarding this proposal.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted in writing c/o Patrick Tyler, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942, by facsimile to (512) 305-6937, or by email to patrick.tyler@csec.texas.gov. Please include "Rulemaking Comments" in the subject line of your letter, fax, or email. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATEMENT OF AUTHORITY

The amended section is proposed pursuant to Government Code §2161.003.

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

§252.2. Purchase of Goods and Services: Historically Underutilized Businesses.

(a) The purpose of this subchapter is to establish the authority and responsibility to promote full and equal business opportunities for all businesses in state contracting in accordance with the goals specified in the State of Texas Disparity Study. It is the policy of the State of Texas and the Commission to encourage the use of historically underutilized businesses and to implement this policy through race, ethnic, and gender-neutral means.

(b) In accordance with Government Code §2161.003, the Commission adopts by reference the Historically Underutilized Business rules of the Comptroller of Public Accounts in 34 Texas Administrative Code §§20.82(d)(1), 20.82(d)(4), and 20.282 - 20.287, [§§20.11, 20.12, 20.13, and 20.14], relating to the Historically Underutilized Business Program.

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

Filed with the Office of the Secretary of State on July 18, 2018.

TRD-201803134

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Earliest possible date of adoption: September 2, 2018

For further information, please call: (512) 305-6915



TITLE 13. CULTURAL RESOURCES

PART 7. STATE PRESERVATION BOARD

CHAPTER 111. RULES AND REGULATIONS OF THE BOARD

13 TAC §111.48

The State Preservation Board (hereinafter referred to as the "Board") proposes new §111.48 of Title 13, Part 7, Chapter 111 of the Texas Administrative Code, concerning procedures for contracts requiring enhanced contract or performance monitoring.

Senate Bill 20 (84th Legislature, Regular Session, 2015) created new Government Code §2261.253(c) which requires the Board by rule establish a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body. New §111.48 describes the contracts that will be reported to the Board members.

Cynthia Provine, Chief Financial Officer, has determined that for the first five-year period the new rule is in effect there will be no fiscal implications for state or local government as a result of administering this rule.

Ms. Provine has also determined that for each year of the first five year period the rule is in effect, the anticipated public benefit will be enhanced focus and accountability for monitoring and management of agency's contracts.

Ms. Provine has also determined that the proposed new rule will not have an adverse economic effect on small businesses, rural communities or individuals because it does not impose any duties or obligations upon small businesses, rural communities or individuals.

Ms. Provine has determined that the proposed rule has no government growth impact pursuant to Texas Government Code §2001.0221.

Comments on the proposal may be submitted to Rod Welsh, Executive Director, State Preservation Board, P.O. Box 13286, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

This rule is proposed under the authority of Texas Government Code §443.007(b), which authorizes the Board to adopt rules concerning the properties and their contents under the Board's control.

§111.48. Procedure for contracts requiring enhanced contract or performance monitoring.

(a) Contracts for the purchase of goods or services that have a value in excess of \$1 million will be identified for enhanced contract or performance monitoring.

(b) Contracts that are identified for enhanced contract or performance monitoring will be reported to the Board.

(c) Contracts will be monitored in accordance with policies and procedures in the SPB contract management handbook.

(d) The Board will be notified, as appropriate, of any serious issue or risk that is identified with respect to a contract monitored under this rule.

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 July 20, 2018.

TRD-201803155

Rod Welsh

Executive Director

State Preservation Board

Earliest possible date of adoption: September 2, 2018

For further information, please call: (512) 475-3616



TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 465. RULES OF PRACTICE

22 TAC §465.1

The Texas State Board of Examiners of Psychologists proposes an amendment to Board rule §465.1, Definitions. The proposed amendment is necessary to ensure greater clarity with regard to a patient's access to his or her file, while simultaneously recognizing that not all output generated from an assessment or evaluation constitutes part of the patient record.

Fiscal Note. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed rule 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. Additionally, Mr. Spinks has determined that enforcing or administering the rule 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 rule amendment is in effect, there will be a benefit to licensees and the general public because the proposed rule amendment will provide greater clarity in the Board's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule amendment will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Board is not required to prepare a regulatory flexibility analysis pursuant to Tex. Gov't. Code §2006.002.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule amendment will have no impact on local employment or a local economy. Thus, the Board is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't. Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed amendment does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments. Therefore, pursuant to §2001.0045 of the Tex. Gov't. Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule amendment is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Board estimates that the proposed rule amendment will have no effect on government growth. The proposed rule amendment does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, it amends an existing regulation; it does not expand or repeal an existing regulation, it clarifies an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule amendment. Thus, the Board is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't. Code.

Request for Public Comments. Comments on the proposed rule 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.

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 Tex. Gov't. Code.

Statutory Authority. The rule amendment is proposed under Tex. Occ. 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.

Additionally, the Board proposes this rule amendment pursuant to the authority found in §501.151(a) of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and regulate its proceedings.

Board rule 22 Tex. Admin. Code §465.22 will be affected by this proposed rule amendment. No other code, articles, or statutes are affected by this section.

§465.1. Definitions.

The following terms have the following meanings:

(1) "Adoption evaluation" has the same meaning as assigned by Tex. Fam. Code Ann. §107.151.

(2) "Child custody evaluation" has the same meaning as assigned by Tex. Fam. Code Ann. §107.101.

(3) "Client" means a party other than a patient seeking or obtaining psychological services, as defined in §501.003 of the Occupations Code, for a third-party with the goal of assisting or caring for that third-party or answering a referral question through the use of forensic psychological services.

(4) "Dual Relationship" means a situation where a licensee and another individual have both a professional relationship and a non-professional relationship. Dual relationships include, but are not limited to, personal friendships, business or financial interactions, mutual club or social group activities, family or marital ties, or sexual relationships.

(5) "Forensic evaluation" is an evaluation conducted, not for the purpose of providing mental health treatment, but rather at the request of a court, a federal, state, or local governmental entity, an attorney, or an administrative body including federal and private disability benefits providers to assist in addressing a forensic referral question.

(6) "Forensic psychological services" are services involving courts, legal claims, or the legal system. The provision of forensic psychological services includes any and all preliminary and exploratory services, testing, assessments, evaluations, interviews, examinations, depositions, oral or written reports, live or recorded testimony, or any psychological service provided by a licensee concerning a current or potential legal case at the request of a party or potential party, an attorney for a party, a court, or any other individual or entity, regardless of whether the licensee ultimately provides a report or testimony that is utilized in a legal proceeding. However, forensic psychological services do not include evaluations, proceedings, or hearings under the Individuals with Disabilities Education Improvement Act (IDEIA).

(7) "Informed Consent" means the written documented consent of the patient, client and other recipients of psychological services only after the patient, client or other recipient has been made aware of the purpose and nature of the services to be provided, including but not limited to: the specific goals of the services; the procedures to be utilized to deliver the services; possible side effects of the services, if applicable; alternate choices to the services, if applicable; the possible duration of the services; the confidentiality of and relevant limits thereto; all financial policies, including the cost and methods of payment; any provisions for cancellation of and payments for missed appointments; and right of access of the patient, client or other recipient to the records of the services.

(8) "Licensee" means a licensed psychologist, provisionally licensed psychologist, licensed psychological associate, licensed specialist in school psychology, applicants to the Board, and any other individual whom the Board has the authority to discipline under these Rules.

(9) "Patient" means a person who receives psychological services, as defined in §501.003 of the Occupations Code, regardless of whether the patient or a third-party pays for the services. The term "patient" shall include a client if the client is a person listed in §611.004(a)(4) or (5) of the Health and Safety Code who is acting on a patient's behalf. A person who is the subject of a forensic evaluation is not considered to be a patient under these rules.

(10) "Private school" has the same meaning as assigned by §5.001 of the Texas Education Code, but does not include a parent or legal guardian who chooses to homeschool a child.

(11) "Professional relationship" means a fiduciary relationship between a licensee and a patient or client involving communications and records deemed confidential under §611.002 of the Health and Safety Code. A professional relationship also exists where licensees are appointed by a court or other governmental body to answer a referral question through the use of forensic psychological services.

(12) "Professional standards" are determined by the Board through its rules, regulations, policies and any other sources adopted by the Board.

(13) "Provision of psychological services" means any use by a licensee of his or her education or training in psychology in the context of a professional relationship. Psychological services include, but are not limited to, therapy, diagnosis, testing, assessments, evaluation, treatment, counseling, supervision, consultation, providing forensic opinions, rendering a professional opinion, performing research, or teaching to an individual, group, or organization.

(14) "Public school" means any state agency, regional education service center, diploma program, school district, or charter school established or authorized under Title 2 of the Texas Education Code and supported in whole or in part by state tax funds.

(15) "Recognized member of the clergy," as used in §501.004(a)(4) of the Act, means a member in good standing of and accountable to a denomination, church, sect or religious organization legally recognized under the Internal Revenue Code, §501(c)(3).

(16) "Records" are any information, regardless of the format in which it is maintained, that can be used to document the delivery, progress or results of any psychological services including, but not limited to, data identifying a recipient of services, dates of services, types of services, informed consents, fees and fee schedules, assessments, treatment plans, consultations, session notes, [test results,] reports, release forms obtained from a client or patient or any other individual or entity, and records concerning a patient or client obtained by the licensee from other sources.

(17) "Report" includes any written or oral assessment, recommendation, psychological diagnostic or evaluative statement containing the professional judgment or opinion of a licensee.

(18) "Supervision" refers to direct, systematic professional oversight of individuals who provide psychological services under the authority of a supervising licensee, whereby the supervisor has the responsibility and ability to monitor and control the psychological services provided to ensure the patient's or client's best interests are met and that the public is protected. In the context of psychological training and education, "supervision" also refers to the formal provision of systematic education and training for purposes of licensure or competency that serves to assist individuals with gaining experience and developing the skills necessary for licensure or competent practice in a particular practice area. However, the term "supervision" does not apply to the supervision of purely administrative or employment matters.

(19) "Test data" refers to a patient's specific answers to test materials, whether spoken or written, generated in drawings, or recorded by computers or other lab devices.

(20) "Test materials" refers to test booklets, forms, manuals, instruments, protocols, software, as well as test questions, and stimuli protected by federal copyright law and used in psychological testing to generate test results and test reports.

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 July 16, 2018.

TRD-201803097

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: September 2, 2018

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



PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 511. ELIGIBILITY SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

22 TAC §511.57

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.57, concerning Qualified Accounting Courses.

Background, Justification and Summary

The amendment to §511.57 allows an applicant to apply up to 12 hours in accounting data analytics and 6 hours in business data analytics classes toward the minimum hours needed to qualify to take the UCPAE.

Fiscal Note

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

Public Benefit

The public benefits expected as a result of adoption of the proposed amendment will be to provide the profession and the public with a licensee with a more diverse educational skill.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

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

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (Government Code, §2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on September 4, 2018.

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

Legal Review

The Board's legal counsel has reviewed the rule and certified that the rule is within the state agency's authority to adopt. (Government Code, §2001.024)

Statutory Authority

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

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

§511.57. *Qualified Accounting Courses.*

(a) An applicant shall meet the board's accounting course requirements in one of the following ways:

(1) Hold a baccalaureate or higher degree from a board-recognized institution of higher education as defined by §511.52 of this title (relating to Recognized Institutions of Higher Education) and present valid transcript(s) from board-recognized institution(s) that show degree credit for no fewer than 30 semester credit hours of upper division accounting courses as defined in subsection (e) of this section; or

(2) Hold a baccalaureate or higher degree from a board-recognized institution of higher education as defined by §511.52 of this title, and after obtaining the degree, complete the requisite 30 semester credit hours of upper division accounting courses, as defined in subsection (e) of this section, from four-year degree granting institutions, or accredited community colleges, provided that all such institutions are recognized by the board as defined by §511.52 of this title, and that the accounting programs offered at the community colleges are reviewed and accepted by the board.

(b) Credit for hours taken at board-recognized institutions of higher education using the quarter system shall be counted as 2/3 of a semester credit hour for each hour of credit received under the quarter system.

(c) The board will accept no fewer than 30 semester credit hours of accounting courses from the courses listed in subsection (e)(1) - (14) [(13)] of this section. The hours from a course that has been repeated will be counted only once toward the required 30 semester hours. The courses must meet the board's standards by containing sufficient business knowledge and application to be useful to candidates

taking the UCPAE. A board-recognized institution of higher education must have accepted the courses for purposes of obtaining a baccalaureate degree or its equivalent, and they must be shown on an official transcript. At least 15 of these hours must result from physical attendance at classes meeting regularly on the campus of the transcript-issuing institution.

(d) A non-traditionally-delivered course meeting the requirements of this section must have been reviewed and approved through a formal, institutional faculty review process that evaluates the course and its learning outcomes and determines that the course does, in fact, have equivalent learning outcomes to an equivalent, traditionally delivered course.

(e) The subject-matter content should be derived from the UCPAE Content Specifications Outline and cover some or all of the following:

(1) financial accounting and reporting for business organizations that may include:

(A) up to nine semester credit hours of intermediate accounting;

(B) advanced accounting;

(C) accounting theory;

(2) managerial or cost accounting (excluding introductory level courses);

(3) auditing and attestation services;

(4) internal accounting control and risk assessment;

(5) financial statement analysis;

(6) accounting research and analysis;

(7) up to 12 semester credit hours of taxation (including tax research and analysis);

(8) financial accounting and reporting for governmental and/or other nonprofit entities;

(9) up to 12 semester credit hours of accounting information systems, including management information systems ("MIS"), provided the MIS courses are listed or cross-listed as accounting courses, and the institution of higher education accepts these courses as satisfying the accounting course requirements for graduation with a degree in accounting;

(10) up to 12 semester credit hours of accounting data analytics, provided the institution of higher education accepts these courses as satisfying the accounting course requirements for graduation with a degree in accounting (while data analytics tools may be taught in the courses, application of the tools should be the primary objective of the courses);

(11) [~~(10)~~] fraud examination;

(12) [~~(11)~~] international accounting and financial reporting;

(13) [~~(12)~~] an accounting internship program (not to exceed 3 semester credit hours) which meets the following requirements:

(A) the accounting knowledge gained is equal to or greater than the knowledge gained in a traditional accounting classroom setting;

(B) the employing firm provides the faculty coordinator and the student with the objectives to be met during the internship;

(C) the internship plan is approved in advance by the faculty coordinator;

(D) the employing firm provides significant accounting work experience with adequate training and supervision of the work performed by the student;

(E) the employing firm provides an evaluation of the student at the conclusion of the internship, provides a letter describing the duties performed and the supervision to the student, and provides a copy of the documentation to the faculty coordinator and the student;

(F) the student keeps a diary comprising a chronological list of all work experience gained in the internship;

(G) the student writes a paper demonstrating the knowledge gained in the internship;

(H) the student and/or faculty coordinator provides evidence of all items upon request by the board;

(I) the internship course shall not be taken until a minimum of 12 semester credit hours of upper division accounting course work has been completed; and

(J) the internship course shall be the equivalent of a traditional course; and

(14) [~~(13)~~] at its discretion, the board may accept up to three semester hours of credit of accounting course work with substantial merit in the context of a career in public accounting, provided the course work is predominantly accounting or auditing in nature but not included in paragraphs (1) - (12) of this subsection. For any course submitted under this provision, the Accounting Faculty Head or Chair must affirm to the board in writing the course's merit and content.

(f) The board requires that a minimum of two semester credit hours in research and analysis relevant to the course content described in subsection (e)(6) or (7) of this section be completed. The semester credit hours may be obtained through a discrete course or offered through an integrated approach. If the course content is offered through integration, the institution of higher education must advise the board of the course(s) that contain the research and analysis content.

(g) The following types of introductory courses do not meet the accounting course definition in subsection (e) of this section:

(1) elementary accounting;

(2) principles of accounting;

(3) financial and managerial accounting;

(4) introductory accounting courses; and

(5) accounting software courses.

(h) Any CPA review course offered by an institution of higher education or a proprietary organization shall not be used to meet the accounting course definition.

(i) CPE courses shall not be used to meet the accounting course definition.

(j) An ethics course required in §511.58(c) of this chapter (relating to Definitions of Related Business Subjects and Ethics Courses) shall not be used to meet the accounting course definition in subsection (e) of this section.

(k) Accounting courses completed through an extension school of a board recognized educational institution may be accepted by the board provided that the courses are accepted for a business baccalaureate or higher degree conferred by that educational institution.

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 July 19, 2018.

TRD-201803144

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: September 2, 2018

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



22 TAC §511.58

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.58, concerning Definition of Related Business Subjects and Ethics Courses.

Background, Justification and Summary

The amendment to §511.58 allows an applicant to apply up to 12 hours in accounting data analytics and 6 hours in business data analytics classes toward their minimum hours needed to qualify to take the UCPAE.

Fiscal Note

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

Public Benefit

The public benefits expected as a result of adoption of the proposed amendment will be to provide the profession and the public with a licensee with a more diverse educational skill.

Probable Economic Cost and Local Employment Impact

William Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

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

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals

subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8)).

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on September 4, 2018.

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

Legal Review

The Board's legal counsel has reviewed the rule and certified that the rule is within the state agency's authority to adopt. (§2001.024)

Statutory Authority

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

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

§511.58. Definitions of Related Business Subjects and Ethics Courses.

(a) Related business courses are those business courses that a board recognized institution of higher education accepts for a business baccalaureate or higher degree by that educational institution.

(b) An individual who holds a baccalaureate degree from a recognized educational institution as defined by §511.52 of this chapter (relating to Recognized Institutions of Higher Education) may take related business courses offered at an accredited community college, provided they are recognized as upper level courses for a 4-year baccalaureate degree from an institution recognized by the board.

(c) The board will accept no fewer than 24 semester credit hours of upper level courses (for the purposes of this subsection, economics and statistics at any college level will count as upper division courses) as related business subjects (without repeat), taken at a recognized educational institution shown on official transcripts or accepted

by a recognized educational institution for purposes of obtaining a baccalaureate degree or its equivalent, in the following areas. No more than 6 credit semester hours taken in any one subject area may be used to meet the minimum hour requirement.

- (1) business law, including study of the Uniform Commercial Code;
- (2) economics;
- (3) management;
- (4) marketing;
- (5) business communications;
- (6) statistics and quantitative methods;
- (7) finance;
- (8) information systems or technology; ~~and~~
- (9) business data analytics (while data analytic tools may be used in the course, application of the tools should be the primary objective of the course); and
- (10) ~~[(9)]~~ other areas related to accounting.

(d) In addition to the 24 hours required in subsection (b) of this section, the board requires that 3 passing semester hours be earned as a result of taking a course in ethics. The course must be taken at a recognized educational institution and should provide students with a framework of ethical reasoning, professional values and attitudes for exercising professional skepticism and other behavior that is in the best interest of the public and profession. The ethics program should provide a foundation for ethical reasoning and include the core values of integrity, objectivity and independence taught by an instructor who has not been disciplined by the board for a violation of the board's rules of professional conduct unless waived by the board.

(e) Effective July 1, 2011, the board requires that a minimum of 2 upper level semester credit hours in accounting communications or business communications be completed. The semester hours may be obtained through a discrete course or offered through an integrated approach. If the course content is offered through integration, the university must advise the board of the course(s) that contain the accounting communications or business communications content.

(f) Credit for hours taken at recognized institutions of higher education using the quarter system shall be counted as 2/3 of a semester hour for each hour of credit received under the quarter system.

(g) Related business courses completed through and offered by an extension school, correspondence school or continuing education program of a board recognized educational institution may be accepted by the board provided that the courses are accepted for a business baccalaureate or higher degree conferred by that educational institution.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: September 2, 2018

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



CHAPTER 518. UNAUTHORIZED PRACTICE OF PUBLIC ACCOUNTANCY

22 TAC §518.5

The Texas State Board of Public Accountancy (Board) proposes an amendment to §518.5, concerning Unlicensed Entities.

Background, Justification, and Summary

The amendment to §518.5 corrects a typo to avoid an opposite meaning so that it is clear that in any letterhead, or in any advertising or promotional statements by an unlicensed entity that is owned by a CPA, the unlicensed entity may refer to accounting, auditing or attest services so long as there is a statement that such services are only performed by the affiliated registered CPA firm

Fiscal Note

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

Public Benefit

The public benefits expected as a result of the adoption of the proposed amendment will be a clearer understanding of the terms that may be used in an unlicensed firm owned by a CPA.

Probable Economic Cost and Local Employment Impact

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

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

Government Growth Impact Statement

William Treacy, Executive Director, has determined that, for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on September 4, 2018.

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

Statutory Authority

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

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

§518.5. *Unlicensed Entities.*

(a) An unlicensed entity is permitted to state that it has an ownership interest and a business affiliation with a registered CPA firm provided each such statement complies with subsection (b) of this section.

(b) In any letterhead, or in any advertising or promotional statements by an unlicensed entity that refers to accounting, auditing or attest services or any derivative terms associated with those services, there must be a statement that such services are only performed by the affiliated registered CPA firm. This statement must be included in conspicuous proximity to the name of the unlicensed entity and be printed in type not less bold than that contained in the body of the letterhead, advertisement or promotional statement. If the advertisement is in audio format, the statement must be clearly declared in each such presentation.

(c) An unlicensed entity performing attest services is in the unauthorized practice of public accountancy and in violation of the Act and the board's rules.

(d) Interpretative Comment: This section clarifies that the mere mention of a business and ownership affiliation with a registered CPA firm on the letterhead, or in advertising or promotional statements, of an unlicensed entity does not violate the Act when done in compliance with the provisions of this section. This section also clarifies that the letterhead, advertising or promotional statements of the unlicensed entity may [nøt] refer to accounting, auditing or attest services, or any derivative terms associated with those services, without violating §901.453 of the Act (relating to Use of Other Titles or Abbreviations). It also clarifies that all attest services must still be performed exclusively by registered CPA firms in accordance with the

Act and all board rules. The definition of "attest services" is set forth in §501.52 of this title (relating to Definitions).

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 July 19, 2018.

TRD-201803146

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: September 2, 2018

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



CHAPTER 519. PRACTICE AND PROCEDURE SUBCHAPTER E. POST BOARD ORDER PROCEDURES

22 TAC §519.95

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.95, concerning Reinstatement.

Background, Justification and Summary

The amendment to §519.95 clarifies the "Three R's" used by the Board when considering applications for reinstatement. The "Three R's" are 1) responsibility, 2) rehabilitation and 3) restitution.

Fiscal Note

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

Public Benefit

The public benefit expected as a result of the adoption of the proposed amendment will be for the licensee and the public to understand what the licensee must demonstrate to the Board to be considered for reinstatement.

Probable Economic Costs and Local Employment Impact

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

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

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on September 4, 2018.

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

Statutory Authority

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

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

§519.95. *Reinstatement.*

(a) A person whose certificate has been revoked may be considered for reinstatement:

(1) after two years following the successful completion of all obligations to the criminal justice system related to convictions that led to the revocation, if any, with no criminal conviction during that two year period;

(2) if there have been no final adjudications finding violations of the Act or any board rule for two years from the effective date of the revocation; and

(3) if the applicant demonstrates from the date of the revocation or from the date of a two year period following the completion of all obligations to the criminal justice system, the following:

(A) Responsibility: applicants must demonstrate that they recognize that their actions were unacceptable, they are accountable for those actions, and they have the ability and intent to not repeat those actions.

(B) Rehabilitation: applicants must demonstrate that they have made behavioral and practice changes that evidence the intent to not repeat the action that resulted in the revocation.

(C) Restitution: applicants must have completed the terms of any agreement or assessment against the applicant.

~~{(a) A person whose certificate has been revoked because of a criminal conviction may not request a reinstatement prior to having provided the board with sufficient evidence of the following:-}~~

~~{(1) successful completion of all obligations to the criminal justice system; and}~~

~~{(2) no criminal convictions, within a two-year period, beginning from the date the terms set forth in paragraph (1) of this subsection were satisfied.}~~

(b) All requests for reinstatement must be in writing to the board.

(c) Reinstatement will be at the sole discretion of 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 July 19, 2018.

TRD-201803147

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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

TITLE 34. PUBLIC FINANCE

PART 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

CHAPTER 109. DOMESTIC RELATIONS ORDERS

34 TAC §§109.2, 109.4, 109.12

The Texas County and District Retirement System (TCDRS) proposes amendments to §§109.2, 109.4, and 109.12, concerning Domestic Relations Orders. TCDRS proposes the amendments to the rules to clarify and further improve the existing rules relating to Domestic Relation Orders.

The proposed amendment to §109.2(1), relating to the definition of "accumulated contributions," clarifies that accumulated contributions do not include employer matching or any employer-provided credits.

The proposed amendment to §109.2(4), relating to the definition of "alternate payee," clarifies that the confidentiality provision in TCDRS's enabling statute applies to an alternate payee.

The proposed amendment to §109.4(a), relating to the requirements for qualified domestic relations orders (QDROs), repeals

language referring to a rule that was repealed effective January 2018.

The proposed amendment to §109.4(b), relating to the requirements for QDROs, requires a QDRO to be signed by both parties or, in the alternative, requires the person submitting the QDRO to provide proof that the other party received notice of the QDRO.

The proposed amendment to §109.12, relating to benefit payments to alternate payees, provides that if an alternate payee dies without a valid beneficiary benefit payments to which the alternate payee would be entitled would be payable to the alternate payee's spouse, or if no surviving spouse, to the alternate payee's estate.

Ann McGeehan, General Counsel of TCDRS, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. McGeehan has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of administering the proposed amendments will be improved administration of QDROs. There will be no costs to small businesses, micro-businesses and rural communities and there are no anticipated economic costs to persons who are required to comply with the amendments as proposed.

The proposed amendments DO NOT: (1) create or eliminate a government program, (2) create a new employee position or eliminate an existing employee position, (3) require an increase or decrease in future legislative appropriations to the agency as TCDRS does not receive legislative appropriations, (4) require an increase or decrease in fees paid to the agency, (5) create a new regulation, (6) expand, limit, or repeal an existing regulation, (7) increase or decrease the number of individuals subject to the rule's applicability, (8) positively or adversely affect this state's economy.

Comments on the proposed amendments may be submitted to Ann McGeehan, General Counsel, TCDRS, 901 South Mopac Expressway, Barton Oaks Plaza IV, Suite 500, Austin, Texas 78746-5789, faxed to (512) 328-8887, or submitted electronically to legaldept@tcdrs.org.

Each of the amendments are proposed under Government Code, §845.102, which authorizes the TCDRS board of trustees to adopt rules for the efficient administration of TCDRS, and under Government Code, §804.003(n), which authorizes the TCDRS board to adopt rules to implement Chapter 804.

Government Code, §841.0091 is affected by these proposed amendments. No other statutes, articles, or codes are affected by these proposed amendments.

§109.2. Definitions.

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

(1) Accumulated contributions--The contributions, other member deposits, and interest credited to a member's individual account in the employees saving fund. Accumulated contributions do not include employer matching or any employer-provided credits.

(2) Act--Texas Government Code, Title 8, Subtitle F, as amended.

(3) Actuarial present value--The value of a benefit that, as computed by the system in its sole discretion, is consistent with §841.001(1) of the Act.

(4) Alternate payee--A spouse, former spouse, child, or other dependent of a member or retiree who is recognized by a domestic relations order as having a right to receive all or a portion of the benefits payable by the system with respect to such member or retiree. The alternate payee's information is subject to the confidentiality provisions in §845.115 of the Act.

(5) Benefits--Any of the payments or benefits described in §109.12 of this title.

(6) Domestic relations liaison--A person (who may or may not be an employee of the system) who is designated by the director of the system to receive and take action concerning domestic relations orders that are sent or delivered to the system.

(7) Domestic relations order--Any judgment, decree, or order (including one which approves a property settlement agreement) which:

(A) relates to the provision of child support, temporary support, or marital property rights to a spouse, former spouse, child, or other dependent of a member or former member of the system; and

(B) is made pursuant to the Texas Family Code or any other applicable domestic relations or community property law.

(8) Participant--A member, former member of the system who has sums of money on deposit with the system or who is or may become entitled to receive any benefit from the system based on membership in the system, or a former member of the system who has commenced receiving a monthly benefit from the system.

(9) Parties--The participant and all alternate payees named in a domestic relations order.

(10) Vested--A participant is vested when he or she has earned the right to receive a lifetime monthly benefit in the future under the terms of the plan.

§109.4. Requirements for Qualified Domestic Relations Orders.

(a) A recital in a domestic relations order to the effect that it is a qualified domestic relations order is not sufficient to make it qualified under this chapter. To constitute an order a qualified domestic relations order under this chapter, an order must be determined, either by the system or by a court of competent jurisdiction, having actual knowledge of the provisions of this chapter, to meet the requirements set forth in this section and §109.5 [and §109-6] of this title (relating to Contents of Domestic Relations Order[; and Order Should Divide All Benefits]). In making that determination, the order itself, and any clarification order entered by a court of competent jurisdiction, and any affidavits or agreements between the parties that are filed with the system may be taken into account.

(b) A qualified domestic relations order shall be signed by the participant and the alternate payee or, in the alternative, the order submitted to the system shall include proof that the participant and the alternate payee received a copy of the order.

§109.12. Payments to Alternate Payees.

(a) At any time after a qualified domestic relations order is filed and approved by the system, the alternate payee may withdraw in a lump sum the accumulated contributions attributable to the interest awarded to the alternate payee by the qualified domestic relations order.

(b) The alternate payee may commence a life annuity calculated in accordance with the terms of the plan and based on the interest awarded to such alternate payee at such time when the participant:

- (1) is eligible to retire;
- (2) commences a disability retirement;
- (3) dies and was eligible for a survivor death benefit under §844.407 of the Government Code; or
- (4) has attained the age at which the participant would have been eligible to retire, if the participant withdrew his or her account and was vested at the time of withdrawal.

(c) An alternate payee may commence an annuity under subsection (b)(1) of this section even if the participant has not retired or under subsection (b)(4) even if the participant is not eligible for an annuity benefit.

(d) If the participant dies before commencing a benefit, and the participant was eligible for a survivor annuity under §844.407 of the Government Code, then the alternate payee may commence an annuity under subsection (b)(3) or withdraw the accumulated contributions awarded under the qualified domestic relations order.

(e) If the participant dies before commencing a benefit, and the participant was not eligible for a survivor annuity death benefit under §844.407 of the Government Code, then the alternate payee may withdraw the accumulated contributions associated with the interest awarded under the qualified domestic relations order.

(f) The alternate payee must commence a distribution when the participant attains age 70 1/2 or when the alternate payee attains age 70 1/2, whichever is earlier. If the participant is still a depositing member and not vested, then the alternate payee is not required to commence an annuity or take a withdrawal. If the participant is vested when a mandatory distribution is required, the alternate payee is eligible for an annuity benefit.

(g) If the alternate payee dies before commencing a benefit, and the participant is eligible for a survivor annuity benefit under §844.407 of the Government Code or has commenced a disability retirement, then the alternate payee's beneficiary must commence a survivor annuity pursuant to §844.407 that is actuarially equivalent to the deceased alternate payee's benefit awarded under the qualified domestic relations order.

(h) If the alternate payee dies before commencing a benefit and the participant is not eligible for a survivor benefit under §844.407 of the Government Code, then the alternate payee's beneficiary is eligible for a benefit equal to the accumulated contributions awarded to the alternate payee at the time of the alternate payee's death.

(i) If the alternate payee dies after commencing a life annuity, then the alternate payee's beneficiary may be eligible for a lump sum payment equal to the difference of the aggregate annuity payments made to the alternate payee, less the accumulated contributions associated with the interest awarded to the alternate payee, if any. If no valid beneficiary exists, or if the alternate payee dies without having a designated valid beneficiary, the benefit that would have otherwise been payable to the beneficiary of the deceased alternate payee is payable to the deceased alternate payee's surviving spouse, or if no surviving spouse, to the deceased alternate payee's estate.

(j) Subsections (a) and (b) of this section will apply to all domestic relations orders approved in accordance with this chapter after January 1, 2018, and to such domestic relations orders approved prior to that date as are construed to provide for such an annuity or withdrawal.

(k) If a qualified domestic relations order is received by the system after the participant begins receiving a retirement annuity, the system shall divide the annuity into two single life annuities; one

payable to the alternate payee and the other payable to the participant in accordance with the order and the rules of the plan. The system shall compute the two single life annuities by determining the actuarial present value of participant's current annuity as of the date that the system has approved the order, and creating an annuity payable to the alternate payee based on the actuarial present value of participant's current annuity awarded under the order to the alternate payee and creating a second life annuity payable to participant based on the remaining actuarial present value of participant's current annuity. Payments to the participant and to the alternate payee cease upon their respective deaths.

(l) If a qualified domestic relations order is received by the system after the participant begins receiving a retirement annuity under which participant chose a dual life option, or a guaranteed term option and the term has not expired, and designated a person other than the alternate payee as beneficiary, then the system, in computing the two single life annuities to be paid to the participant and alternate payee respectively, shall first calculate the actuarial present value of the participant's current annuity that is not attributable to the beneficiary as of the date that the system has approved the order. The interest of the beneficiary in the participant's current retirement annuity will not be affected by the division of benefits. The actuarial present value of the participant's current annuity that is not attributed to the beneficiary is then divided into two single life annuities. The single life annuity payable to alternate payee is based on the actuarial present value of participant's current annuity not attributable to the beneficiary awarded under the order to the alternate payee, and the participant's single life annuity is computed based on the remaining actuarial present value of participant's current annuity not attributable to the beneficiary.

(m) The mortality assumption for alternate payees for determining the actuarial equivalent of a benefit payable to an alternate payee shall be the same as the mortality assumption for beneficiaries as set forth in §103.1 of this title (relating to Actuarial Tables) with regard to service retirements.

(n) If participant's employer grants a cost of living adjustment pursuant to the terms of the plan, and if the alternate payee has commenced an annuity, then the alternate payee is eligible to receive a cost of living adjustment to his or her annuity.

(o) Notwithstanding any other provision of this chapter, all distributions made under this chapter must be determined and made in accordance with §401(a) of the Internal Revenue Code, including but not limited to §401(a)(9); and §415.

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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Ann McGeehan

General Counsel

Texas County and District Retirement System

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For further information, please call: (512) 328-8889



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 145. PAROLE

SUBCHAPTER A. PAROLE PROCESS

37 TAC §§145.1 - 145.3, 145.9, 145.12 - 145.18, 145.20

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC Chapter 145, Subchapter A, §§145.1, 145.2, 145.3, 145.9, 145.12 - 145.18 and 145.20 concerning parole process. The amendments are proposed to capitalize titles and reformat statutory references throughout the rules.

David Gutiérrez, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering these sections.

Mr. Gutiérrez also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to these sections will be to bring the rule into compliance with current board practice and current statutory requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rules as proposed.

Mr. Gutiérrez also has determined that during the first five years that the proposed amendments are in effect, the amendments will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; does not create a new regulation; does not expand, limit or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on micro-businesses, small businesses, or rural communities as defined in Texas Government Code, Section 2006.001.

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by e-mail to bettie.wells@tdcj.texas.gov. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rules are proposed under Texas Government Code Sections 508.036, 508.0441, 508.045, 508.141, and 508.149. Section 508.036 requires the board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and Section 508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.141 provides the board authority to adopt policy establishing the date on which the board may reconsider for release an inmate who has previously been denied release. Section 508.149 provides authority for the discretionary release of offenders on mandatory supervision.

No other statutes, articles, or codes are affected by these amendments.

§145.1. Parole Decision-Maker.

(a) Unless otherwise provided, parole decisions shall be made by two-thirds vote of a parole panel. The Board [board] is the parole release decision-maker of persons convicted of a capital felony offense, who are eligible for parole, or an offense under Sections [§§]20A.03, 21.02, 21.11(a)(1), and 22.021, Penal Code, or who is required under [Texas Government Code] Section 508.145(c), Government Code to serve 35 calendar years before becoming eligible for parole review. In these cases, the Board [board] may grant parole only upon a two-thirds vote. The Board [board] is not required to meet as a body to perform this duty.

(b) In all other matters of parole and mandatory supervision and revocation of parole and mandatory supervision, three-member parole panels are parole decision-makers. A parole panel may consider any eligible offender for release and, upon a majority vote of the panel may approve or deny release to supervision. If a majority of the panel does not concur, the case is forwarded to a panel designated by the Presiding [presiding] Officer [officer] (Chair) [(chair)] to revote. The members of a parole panel are not required to meet as a body to perform these decision-making duties.

§145.2. Standard Parole Guidelines.

(a) The parole panels are vested with complete discretion in making parole decisions to accomplish the mandatory duties found in Chapter 508, Government Code.

(b) Parole guidelines have been adopted by the Board [board] to assist parole panels in the selection of possible candidates for release. Parole guidelines are applied as a basis, but not as the exclusive criteria, upon which parole panels base release decisions.

(1) The parole guidelines consist of a risk assessment instrument and an offense severity scale. Combined, these components serve as an instrument to guide parole release decisions.

(2) The risk assessment instrument includes two sets of components, static and dynamic factors.

(A) Static factors include:

- (i) Age at first admission to a juvenile or adult correctional facility;
- (ii) History of supervisory release revocations for felony offenses;
- (iii) Prior incarcerations;
- (iv) Employment history; and
- (v) The commitment offense.

(B) Dynamic factors include:

- (i) The offender's current age;
- (ii) Whether the offender is a confirmed security threat group (gang) member;
- (iii) Education, vocational and certified on-the-job training programs completed during the present incarceration;
- (iv) Prison disciplinary conduct; and
- (v) Current prison custody level.

(3) Scores from the risk assessment instrument are combined with an offense severity rating for the sentenced offense of record to determine a parole candidate's guidelines level.

(c) The adoption and use of the parole guidelines does not imply the creation of any parole release formula, or a right or expectation by an offender to parole based upon the guidelines. The risk assessment instrument and the offense severity scale, while utilized for re-

search and reporting, are not to be construed so as to mandate either a favorable or unfavorable parole decision. The parole guidelines serve as an aid in the parole decision process and the parole decision shall be at the discretion of the Board [board] and the voting parole panel.

(d) The Board [board] is authorized to revise the parole guidelines as warranted.

§145.3. Policy Statements Relating to Parole Release Decisions by the Board of Pardons and Paroles.

To aid the Board [board] in its analysis and research of parole release, the Board [board] adopts the following policies.

(1) Release to parole is a privilege, not an offender right, and the parole decision maker is vested with complete discretion to grant, or to deny parole release as defined by statutory law.

(A) Candidates for parole are to be evaluated on an individual basis.

(B) There are no mandatory rules or guidelines that must be followed in every case because each offender is unique. The Board [board] and Parole [parole] Commissioners [commissioners] have the statutory duty to make release decisions which are only in the best interest of society. The Board [board] and parole panels use parole guidelines as a tool to aid in the discretionary parole decision process.

(2) The Board [board] will reconsider for release an offender, other than an offender serving a sentence for an offense listed in Section 508.149(a), [Texas] Government Code[, Section 508.149(a),] as soon as practicable after the first anniversary of the date of denial.

(3) The Board [board] will reconsider for release an offender who is serving a sentence for an offense under Section 508.149(a), [Texas] Government Code, [Section 508.149(a),] or second or third degree under [Texas Penal Code,] Section 22.04, Penal Code, after the first anniversary date of the denial and end before the fifth anniversary date of the denial, but in no event shall it be less than one calendar year from the panel decision date.

(4) An offender will be considered for parole when eligible and when the offender meets the following criteria with regard to behavior during incarceration.

(A) Other than on initial parole eligibility, the person must not have had a major disciplinary misconduct report in the six-month period prior to the date he is reviewed for parole; which has resulted in loss of good conduct time or reduction to a classification status below that assigned during that person's initial entry into TDCJ-CID.

(B) Other than on initial parole eligibility, at the time he is reviewed for parole the person must be classified in the same or higher time earning classification assigned during that person's initial entry into TDCJ-CID.

(C) If any offender who has received an affirmative vote to parole and following the vote, notification is received that the offender has been reduced below initial classification status or has lost good conduct time, the parole decision will be reviewed and revoked by the parole panel that rendered the decision.

(D) A person who has been revoked and returned to custody for a violation of the conditions of release to parole or mandatory supervision will be considered for release to parole or mandatory supervision when eligible.

(E) An offender who is otherwise eligible for parole and who has charges pending alleging a felony offense committed while in

TDCJ, and for which a complaint has been filed with a magistrate of the State of Texas, any facility under its supervision, or a facility under contract with TDCJ will not be considered for release to parole.

(F) An offender who is otherwise eligible for release and meets the criteria for Medically Recommended Intensive Supervision (MRIS) as required by [Texas Government Code,] Section 508.146, Government Code may be considered for release on parole.

(5) Any consideration by a Board [board] Member [member] or Parole [parole] Commissioner [commissioner] of an offender's litigation activities when determining an offender's candidacy for parole is strictly prohibited. No offender will be denied the opportunity to present to the judiciary, including appellate courts, his or her allegations concerning violations of fundamental constitutional rights. Any consideration of such legal activity during the parole review, supervision or revocation process is a violation of Board policy. In the event parole is denied in violation of this section, the offender may pursue a remedy under the special review provisions of §145.17 of this title (relating to Action upon Special Review--Release Denied). In the event parole or mandatory supervision is revoked in violation of this section, the offender may pursue a remedy under the motion to reopen hearing provisions of §146.11 of this title (relating to Releasee's Motion to Reopen Hearing or Reinstate Supervision).

§145.9. Parole Interview.

Prior to consideration for parole by a parole panel, the offender may be interviewed by a Board [board] member or Parole [parole] Commissioner [commissioner] whether it is the initial review or a subsequent review.

§145.12. Action upon Review.

A case reviewed by a parole panel for parole consideration may be:

(1) deferred for request and receipt of further information;

(2) denied a favorable parole action at this time and set for review on a future specific month and year (Set-Off). The next review date (Month/Year) for an offender serving a sentence listed in Section 508.149(a), Government Code, or serving a sentence for second or third degree under Section 22.04 [of the] Penal Code may be set at any date after the first anniversary of the date of denial and end before the fifth anniversary of the date of denial, unless the inmate is serving a sentence for an offense under Section 22.021, Penal Code, or a life sentence for a capital felony, in which event the designated month must begin after the first anniversary of the date of the denial and end before the 10th anniversary of the date of the denial. The next review date for an offender serving a sentence not listed in Section 508.149(a), Government Code shall be as soon as practicable after the first anniversary of the denial;

(3) denied parole and ordered serve-all, but in no event shall this be utilized if the offender's projected release date is greater than five years for offenders serving sentences listed in Section 508.149(a), Government Code, or serving a sentence for second or third degree under Section 22.04 [of the] Penal Code; or greater than one year for offenders not serving sentences listed in Section 508.149(a), Government Code. If the serve-all date in effect on the date of the panel decision is extended by more than 180 days, the case shall be placed in regular parole review;

(4) determined that the totality of the circumstances favor the offender's release on parole, further investigation (FI) is ordered with the following available voting options; and, impose all conditions of parole or release to mandatory supervision that the parole panel is required or authorized by law to impose as a condition of parole or release to mandatory supervision;

(A) FI-1--Release the offender when eligible;

(B) FI-2 (Month/Year)--Release on a specified future date;

(C) FI-3 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than three months from specified date. Such TDCJ program may include either CHANGES/Lifeskills, Voyager, Segovia Pre-Release Center (Segovia PRC), or any other approved tier program;

(D) FI-4 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than four months from specified date. Such TDCJ program shall be the Sex Offender Education Program (SOEP);

(E) FI-5--Transfer to In-Prison Therapeutic Community Program. Release to aftercare component only after completion of IPTC program;

(F) FI-6--Transfer to a DWI Program. Release to continuum of care program as required by paragraph (5) of this section;

(G) FI-6 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and no earlier than six months from specified date. Such TDCJ program may include the Pre-Release Therapeutic Community (PRTC), Pre-Release Substance Abuse Program (PR SAP), or In-Prison Therapeutic Community Program (IPTC), or any other approved tier program;

(H) FI-7 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than seven months from the specified date. Such TDCJ program shall be the Serious and Violent Offender Reentry Initiative (SVORI);

(I) FI-9 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than nine months from specified date. Such TDCJ program shall be the Sex Offender Treatment Program (SOTP-9);

(J) FI-18 R (Month/Year)--Transfer to a TDCJ rehabilitation treatment program. Release to parole only after program completion and no earlier than 18 months from specified date. Such TDCJ program shall be either the Sex Offender Treatment Program (SOTP-18), or the InnerChange Freedom Initiative (IFI);

(5) any person released to parole after completing a TDCJ program as a prerequisite for parole, must participate in and complete any required post-release program. A parole panel shall require as a condition of release on parole or release to mandatory supervision that an offender who immediately before release is a participant in the program established under Section 501.0931, Government Code, participate as a releasee in a drug or alcohol abuse continuum of care treatment program; or

(6) any offender receiving an FI vote, as listed in paragraph (4)(A) - (J) of this section, shall be placed in a program consistent with the vote. If treatment program managers recommend a different program for an offender, a transmittal shall be forwarded to the parole panel requesting approval to place the offender in a different program.

§145.13. Action upon Review; Consecutive (Cumulative) Felony Sentencing.

(a) This section applies only to an offender sentenced to serve consecutive sentences if each sentence in the series is for an offense committed on or after September 1, 1987.

(b) A parole panel shall review for parole consideration consecutive felony sentencing cases as determined and in the sequence submitted by TDCJ.

(c) If the case under parole consideration is a pre-final consecutive felony sentencing case, the parole panel may:

(1) defer for request and receipt of further information;

(2) vote CU/FI (Month/Year Cause Number), designate the date on which the offender would have been eligible for release on parole if the offender had been sentenced to serve a single sentence. This date shall be within a three-year incarceration period following the panel decision;

(3) vote CU/NR (Month/Year Cause Number), deny favorable parole action and set the next review date at one year from the panel decision date. If the offender is serving an offense under Section [§]508.149(a), Government Code, or second or third degree under Section [§]22.04, [of the] Penal Code; the next review date (month/year) may be set at any date in the five-year incarceration period following the panel decision date, but in no event shall it be less than one calendar year from the panel decision date; or

(4) vote CU/SA (Month/Year Cause Number): If the offender is serving an offense under Section [§]508.149(a), Government Code, or second or third degree under Section [§]22.04, [of the] Penal Code; deny release and order serve-all, but in no event shall this be utilized if the offender's maximum expiration date is over five years from the date of the panel decision. If the offender is not serving an offense under Section [§]508.149(a), Government Code, deny release and order serve-all, but in no event shall this be utilized if the offender's maximum expiration date is over one year from the date of the panel decision.

(d) If the case under parole consideration is the last and final in a series of consecutive felony sentencing cases, the case shall be reviewed under §145.12 of this title (relating to Action upon Review).

(e) When a parole panel reviews for parole consideration a consecutive felony sentencing case, the parole panel shall indicate the Cause Number of the consecutive felony sentencing case it is considering.

§145.14. Action upon Review; Release to Mandatory Supervision.

(a) This section applies only to an offender eligible for release to mandatory supervision if the sentence is for an offense committed on or after September 1, 1996.

(b) If TDCJ-CID determines that release of the offender will occur because the offender will reach the projected release date, the case will be processed as follows:

(1) the offender shall be provided written notice of the discretionary mandatory review and shall have 30 days from the receipt of the notice to submit, in writing, information to the Board [board]; and

(2) after the expiration of the 30 day time period, the case shall be referred to a parole panel who will consider the case for release to mandatory supervision no earlier than 60 days of the offender's projected release date.

(c) Upon considering a case for release to mandatory supervision, a parole panel may:

(1) defer for request and receipt of further information;

(2) vote DMS Month/Year, deny release to mandatory supervision and set the next mandatory supervision review date one year from the panel decision date; or

(3) vote RMS, release to mandatory supervision.

(d) Subsection (c) of this section applies to all subsequent reconsiderations for release to mandatory supervision.

§145.15. *Action upon Review; Extraordinary Vote (SB 45).*

(a) This section applies to any offender convicted of an offense under Sections 20A.03, 21.02, or 21.11(a)(1), [Texas] Penal Code[, Sections 20A.03, 21.02, or 21.11(a)(1)], or who is required under [Texas Government Code,] Section 508.145(c), Government Code to serve 35 calendar years before becoming eligible for parole review. All members of the Board [board] shall vote on the release of an eligible offender. At least two-thirds of the members must vote favorably for the offender to be released to parole. Members of the Board [board] shall not vote until they receive and review a copy of a written report from the department on the probability of the offender committing an offense after being released.

(1) Upon review, use of the full range of voting options is not conducive to determining whether two-thirds of the Board [board] considers the offender ready for release to parole.

(2) If it is determined that circumstances favor the offender's release to parole the Board [board] has the following voting options available:

(A) FI[+]-1--Release the offender when eligible;

(B) FI-4 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than four months from specified date. Such TDCJ program shall be the Sex Offender Education Program (SOEP);

(C) FI-9 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than nine months from specified date. Such TDCJ program shall be the Sex Offender Treatment Program (SOTP-9); or

(D) FI-18 R (Month/Year)--Transfer to a TDCJ rehabilitation treatment program. Release to parole only after program completion and no earlier than eighteen months from the specified date. Such TDCJ program may include the Sex Offender Treatment Program (SOTP-18), or the InnerChange Freedom Initiative (IFI). In no event shall the specified date be set more than three years from the current panel decision date.

(3) If it is determined that circumstances do not support a favorable action upon review, the following options are available:

(A) NR (Month/Year)--Deny release and set the next review date for 36 or 60 months following the panel decision date; or

(B) SA--The offender's minimum or maximum expiration date is less than 60 months away. The offender will continue to serve their sentence until that date.

(b) If the offender is sentenced to serve consecutive sentences and each sentence in the series is for an offense committed on or after September 1, 1987, the following voting options are available to the Board [board] panel:

(1) CU/FI (Month/Year-Cause Number)--A favorable parole action that designates the date an offender would have been released if the offender had been sentenced to serve a single sentence;

(2) CU/NR (Month/Year-Cause Number)--Deny release and set the next review date for 36 or 60 months following the panel decision date; or

(3) CU/SA (Month/Year-Cause Number)--Deny release and order serve-all if the offender is within 60 months of their maximum expiration date.

(c) Some offenders are eligible for consideration for release to Discretionary Mandatory Supervision if the sentence is for an offense committed on or after September 1, 1996. Prior to the offender reaching

the projected release date, the voting options are the same as those listed in subsections (a) and (b) of this section. If TDCJ-CID determines that release of the offender will occur because the offender will reach the projected release date, the case shall be referred to a three-member parole panel within 30 days of the offender's projected release date for consideration for release to mandatory supervision using the following options:

(1) RMS--Release to mandatory supervision; or

(2) DMS (Month/Year)--Deny release to mandatory supervision and set for review on a future specific month and year. The next mandatory supervision review date shall be set one year from the panel decision date.

(d) Upon review of any eligible offender who qualifies for release to Medically Recommended Intensive Supervision (MRIS), the MRIS panel shall initially vote to either recommend or deny MRIS consideration. The MRIS panel shall base this decision on the offender's medical condition and medical evaluation, and shall determine whether the offender constitutes a threat to public safety.

(1) If the MRIS panel determines the offender does constitute a threat to public safety, no further voting is required.

(2) If the MRIS panel determines that the offender does not constitute a threat to public safety, the case shall be sent to the full Board [board], which shall determine whether to approve or deny the offender's release to parole. The following voting options are available to the Board [board]:

(A) Approve MRIS--The Board [board] shall vote F1-1 and impose special condition "O" - "The offender shall comply with the terms and conditions of the MRIS program and abide by a Texas Correctional Office for Offenders with Mental or Medical Impairments (TCOOMMI)-approved release plan. At any time this condition is in effect, an offender shall remain under the care of a physician and in a medically suitable placement"; the Board [board] shall provide appropriate reasons for the decision to approve MRIS; or

(B) Deny MRIS--The Board [board] shall provide appropriate reasons for the decision to deny MRIS.

(3) The decision to approve release to MRIS for an offender remains in effect until specifically withdrawn by the Board [board].

(e) If a request for a special review meets the criteria set forth in §145.17(f) of this title (relating to Action upon Special Review--Release Denied), the offender's case shall be sent to the special review panel.

(1) The special review panel may take action as set forth in §145.17(i) of this title.

(2) When the special review panel decides the offender's case warrants a special review, the case shall be re-voted by the full Board [board]. The Presiding [presiding] Officer [officer] shall determine the order of the voting panel. Voting options are the same as those in subsections (a) - (c) of this section.

§145.16. *Action upon Special Review--Release Approved.*

(a) Responses received from trial officials or victims after a release to parole or release to mandatory supervision decision shall be considered information not previously available to the parole panel. Provided that release to parole or mandatory supervision has not occurred, the responses shall be referred to the parole panel or to the Board [board] office corresponding to the parole panel that rendered the release to parole or release to mandatory supervision decision. A

case reviewed by a parole panel, pursuant to the receipt of information not previously available to the parole panel, may then:

(1) be continued in a release to parole or release to mandatory supervision status with or without additional conditions of release imposed; or

(2) have the release to parole or release to mandatory supervision decision withdrawn and the next review date set by the parole panel in accordance with applicable provisions of Chapter 145 of this title (relating to Parole Process).

(b) Nothing in this rule is intended to restrict a parole panel member from reconsidering a release vote to parole or mandatory supervision.

§145.17. Action upon Special Review--Release Denied.

(a) This rule provides a forum for receipt and consideration of information not previously available to the parole panel where the decision of the panel was to deny release to parole or mandatory supervision. If the denial decision was based upon erroneous information or an administrative file processing error, this rule does not apply.

(b) Requests for special review shall apply only to cases reviewed for release to parole or mandatory supervision where the decision of the parole panel was to deny release to parole or mandatory supervision.

(c) All requests for special review shall be in writing and signed by the offender, his or her attorney, or in cases where the offender is unable to sign due to a mental or physical impairment, by a person acting on his or her behalf.

(d) All requests for special review shall be filed with the Texas Board of Pardons and Paroles, Board Administrator, 8610 Shoal Creek Blvd., Austin, Texas 78757.

(e) The Board [board] Administrator [administrator] shall refer to the special review parole panel only those requests for special review which meet the criteria set forth herein.

(f) Requests for special review shall be considered in the following circumstances:

(1) a written request on behalf of an offender is received which cites information not previously available to the parole panel; or

(2) a parole panel denied release to parole or mandatory supervision and a parole panel member who voted with the majority on that panel desires to have the decision reconsidered prior to the next review (NR) date; or

(3) if both parole panel members who voted with the majority are no longer active Board [board] Members [members] or Parole [parole] Commissioners [commissioners], the Presiding [presiding] Officer [officer] (Chair) [chair] places the case in the special review process to be reconsidered prior to the NR date.

(g) Information not previously available shall mean only:

(1) responses from trial officials and victims;

(2) a change in an offender's sentence and judgment; or

(3) an allegation that the parole panel has committed an error of law or Board [board] rule.

(h) [Error] Erroneous information shall mean information provided to the parole panel during the review process that may have been utilized as a basis for denial but is later determined to be inaccurate.]

[Error] Administrative processing error shall mean an action during the processing of an offender's file which results in the omission of or the

recording of inaccurate information with respect to voting, denial reasons, or NR dates.]

[Error] A special review parole panel, other than the current voting panel, shall decide and exercise final action on such requests for special review.

(i) [Error] Upon considering a case for special review, the special review parole panel may take the following action:

(1) defer for request and receipt of further information;

(2) vote remain set; or

(3) revote the case in accordance with applicable provisions of Subchapter A of this chapter (relating to Parole Process).

(j) [Error] The special review parole panel shall not set an offender's NR date on a date later than the previous NR date.

§145.18. Action upon Review; Extraordinary Vote (HB 1914).

(a) This section applies to any offender convicted of a capital offense with a life sentence, who is eligible for parole, and an offense under [Texas Penal Code,] Section 22.021, Penal Code. All members of the Board [board] shall vote on the release of an eligible offender. At least two-thirds of the members must vote favorably for the offender to be released to parole. Members of the Board [board] shall not vote until they receive and review a copy of a written report from the department on the probability of the offender committing an offense after being released.

(1) Upon review, use of the full range of voting options is not conducive to determining whether two-thirds of the Board [board] considers the offender ready for release to parole.

(2) If it is determined that circumstances favor the offender's release to parole the Board [board] has the following voting options available:

(A) FI[+]1--Release the offender when eligible;

(B) FI-4 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than four months from specified date. Such TDCJ program shall be the Sex Offender Education Program (SOEP);

(C) FI-9 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than nine months from specified date. Such TDCJ program shall be the Sex Offender Treatment Program (SOTP-9); or

(D) FI-18 R (Month/Year)--Transfer to a TDCJ rehabilitation treatment program. Release to parole only after program completion and no earlier than eighteen months from the specified date. Such TDCJ program may include the Sex Offender Treatment Program (SOTP-18), or the InnerChange Freedom Initiative (IFI). In no event shall the specified date be set more than three years from the current panel decision date.

(3) If it is determined that circumstances do not support a favorable action upon review, the following options are available:

(A) NR (Month/Year)--Deny release and set the next review date for 36, 60, 84 or 120 months following the panel decision date; or

(B) SA--The offender's minimum or maximum expiration date is less than 120 months away. The offender will continue to serve their sentence until that date.

(b) If the offender is sentenced to serve consecutive sentences and each sentence in the series is for an offense committed on or after

September 1, 1987, the following voting options are available to the Board [board] panel:

(1) CU/FI (Month/Year-Cause Number)--A favorable parole action that designates the date an offender would have been released if the offender had been sentenced to serve a single sentence;

(2) CU/NR (Month/Year-Cause Number)--Deny release and set the next review date for 60, 84 or 120 months following the panel decision date; or

(3) CU/SA (Month/Year-Cause Number)--Deny release and order serve-all if the offender is within 120 months of their maximum expiration date.

(c) Some offenders are eligible for consideration for release to Discretionary Mandatory Supervision if the sentence is for an offense committed on or after September 1, 1996. Prior to the offender reaching the projected release date, the voting options are the same as those listed in subsections (a) and (b) of this section. If TDCJ-CID determines that release of the offender will occur because the offender will reach the projected release date, the case shall be referred to a three-member parole panel within 30 days of the offender's projected release date for consideration for release to mandatory supervision using the following options:

(1) RMS--Release to mandatory supervision; or

(2) DMS (Month/Year)--Deny release to mandatory supervision and set for review on a future specific month and year. The next mandatory supervision review date shall be set one year from the panel decision date.

(d) Upon review of any eligible offender who qualifies for release to Medically Recommended Intensive Supervision (MRIS), the MRIS panel shall initially vote to either recommend or deny MRIS consideration. The MRIS panel shall base this decision on the offender's medical condition and medical evaluation, and shall determine whether the offender constitutes a threat to public safety.

(1) If the MRIS panel determines the offender does constitute a threat to public safety, no further voting is required.

(2) If the MRIS panel determines that the offender does not constitute a threat to public safety, the case shall be sent to the full Board [board], which shall determine whether to approve or deny the offender's release to parole. The following voting options are available to the Board [board]:

(A) Approve MRIS--The Board [board] shall vote F1-1 and impose special condition "O" --"The offender shall comply with the terms and conditions of the MRIS program and abide by a Texas Correctional Office for Offenders with Mental or Medical Impairments (TCOOMMI)-approved release plan. At any time this condition is in effect, an offender shall remain under the care of a physician and in a medically suitable placement"; the Board [board] shall provide appropriate reasons for the decision to approve MRIS; or

(B) Deny MRIS--The Board [board] shall provide appropriate reasons for the decision to deny MRIS.

(3) The decision to approve release to MRIS for an offender remains in effect until specifically withdrawn by the Board [board].

(e) If a request for a special review meets the criteria set forth in §145.17(f) of this title (relating to Action upon Special Review--Release Denied), the offender's case shall be sent to the special review panel.

(1) The special review panel may take action as set forth in §145.17(i) of this title.

(2) When the special review panel decides the offender's case warrants a special review, the case shall be re-voted by the full Board [board]. The Presiding Officer [presiding officer] shall determine the order of the voting panel. Voting options are the same as those in subsections (a) - (c) of this section.

§145.20. Parole Certificate.

(a) When the parole plan has been approved, a parole certificate shall be issued and signed with a facsimile signature of the Chair [chair].

(b) The parole approval is not effective or final until a formal parole agreement is executed by the offender. The approval may be withdrawn by a parole panel at any time prior to the acceptance and execution by the offender of the formal parole agreement(s) which is contained in the parole certificate.

(c) The parole certificate shall not become effective and in force until the conditions are agreed to, signed, and accepted by the offender.

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 July 23, 2018.

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Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Earliest possible date of adoption: September 2, 2018

For further information, please call: (512) 463-8216



SUBCHAPTER B. TERMS AND CONDITIONS OF PAROLE

37 TAC §145.27

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC Chapter 145, Subchapter B, §145.27, concerning terms and conditions of parole. The amendments are proposed to capitalize titles and reformat statutory references throughout the rules.

David Gutiérrez, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering these sections.

Mr. Gutiérrez also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to these sections will be to bring the rule into compliance with current board practice and current statutory requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rules as proposed.

Mr. Gutiérrez also has determined that during the first five years that the proposed amendments are in effect, the amendments will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropri-

ations to the agency; will not require an increase or decrease in fees paid to the agency; does not create a new regulation; does not expand, limit or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on micro-businesses, small businesses, or rural communities as defined in Texas Government Code, Section 2006.001.

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by e-mail to bettie.wells@tdcj.texas.gov. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rules are proposed under Texas Government Code Sections 508.036, 508.0441, 508.045, 508.141, and 508.149. Section 508.036 requires the board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and Section 508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.141 provides the board authority to adopt policy establishing the date on which the board may reconsider for release an inmate who has previously been denied release. Section 508.149 provides authority for the discretionary release of offenders on mandatory supervision.

No other statutes, articles, or codes are affected by these amendments.

§145.27. *Personal Identification Program.*

(a) Any person released to parole or mandatory supervision who does not hold a Texas driver's license shall participate in the Texas Department of Public Safety Personal Identification Certificate Program under Chapter 521, ~~of the Texas~~ Transportation Code.

(b) Participation shall be deemed satisfactory if the releasee has in possession at all times a valid Texas driver's license or personal identification certificate duly issued by the Texas Department of Public Safety.

(c) All persons on release to parole or mandatory supervision shall comply with all applicable laws, rules and regulations in connection with the Texas Department of Public Safety Driver's License Program or the Personal Identification Certificate Program.

(d) This condition shall be strictly enforced and shall remain in effect and govern all persons released to parole or mandatory supervision for the duration of the supervision period.

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

Filed with the Office of the Secretary of State on July 23, 2018.

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Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

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For further information, please call: (512) 463-8216

