

ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 11. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM REIMBURSEMENT

1 TAC §355.8200

The Texas Health and Human Services Commission (HHSC) adopts new §355.8200, concerning Retained Funds for the Uncompensated Care Program, in Texas Administrative Code, Title 1, Part 15, Chapter 355, Subchapter J, Division 11. Section 355.8200 is adopted without changes to the proposed text as published in the October 8, 2021, issue of the *Texas Register* (46 TexReg 6624). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The new rule authorizes HHSC to set and collect an application fee for the Uncompensated Care (UC) program currently valued at \$3.9 billion annually, in accordance with 42 CFR §433.68(d)(1)(iv).

The rule is necessary to comply with Senate Bill (S.B.) 2138, 86th Legislature, Regular Session, 2019 and S.B. 1 (Article II, Texas Health and Human Services Commission, Rider 15), 87th Legislature, Regular Session, 2021. The establishment of a rule is critical to the ability to support the infrastructure needed to operate and safeguard the UC program operated under the Texas Healthcare Transformation and Quality Improvement Project 1115 waiver (THTQIP). The amount of the application fee will be determined based on the cost necessary to administer the program and the funds will be spent to assist in administering the UC program.

During the 86th Texas Legislative Session, the Texas legislature passed S.B. 2138, which gave HHSC the authority to retain certain funds. The bill established reporting requirements and limitations on the amount of funds that could be collected. The 87th Texas Legislature adopted a rider in S.B. 1 that has given HHSC the authority to increase the number of full-time equivalents for increased monitoring and oversight of the use of local funds and the administration of new programs. HHSC is now creating a monitoring plan to oversee the use of local funds in the Medicaid program.

The required application fee will be implemented beginning October 1, 2021.

COMMENTS

The 21-day comment period ended October 29, 2021.

During this period, HHSC received comments regarding the proposed rule from three commenters, including Lillian M. Hudspeth Memorial Hospital; Preferred Management Corporation; and the Texas Hospital Association. A summary of comments relating to the rule and HHSC's responses follows.

Comment: Commenters questioned the need for an application fee.

Response: HHSC disagrees with the commenters. The rule and fee are necessary to comply with S.B. 2138, 86th Legislature, Regular Session, 2019 and S.B. 1 (Article II, Texas Health and Human Services Commission, Rider 15), 87th Legislature, Regular Session, 2021. The establishment of a rule is critical to the ability to support the infrastructure needed to operate and safeguard the UC program operated under the Texas Healthcare Transformation and Quality Improvement Project 1115 waiver (THTQIP). The amount of the application fee will be determined based on the cost necessary to administer the program and the funds will be spent to assist in administering the UC program and related activities. No changes to the rule were made in response to this comment.

Comment: Commenters requested HHSC's consideration of the impact to small, rural hospitals. A request was made to also consider alternative fee structures that do not disproportionately disadvantage certain hospital classes.

Response: HHSC appreciates the concern about the impact that a uniform amount will have on differently sized hospitals and will consider this in the future. However, at this time, HHSC has determined the most efficient method to implement the proposed rule is to apply the amount uniformly to all applicable providers. HHSC plans to consider other exemptions, such as rural hospitals, at a future date. No changes to the rule were made in response to this comment.

Comment: Commenter requested HHSC default to offsetting the fee from payments and to clarify whether the offset is applied to advance, final, or other payments.

Response: If a provider does not remit payment at the time of the application submission, an account receivable will be established. HHSC will offset the next applicable payment to the provider against the account receivable until the obligation to the state is discharged. HHSC has chosen to use the term "next applicable payment to the provider" to encompass the advance payment or the final payment. This rule and associated payments are only related the Uncompensated Care program. No changes to the rule were made in response to this comment.

Comment: Commenter requested the creation of a designation on joint Uncompensated Care/Disproportionate Share Hospital Applications for hospitals that wish to be considered for Disproportionate Share Hospital (DSH) only.

Response: The application has historically, and currently has, the ability to designate one or both programs. The application will continue to include a section labeled "Request To Participate" where the provider can choose to apply for either DSH, UC, or both DHS and UC by indicating a "Yes" or "No" response for each of the programs. No changes to the rule were made in response to this comment.

Comment: Commenter requests alignment of rule text with Rider 15 (87th Legislature).

Response: The rule text is aligned with §531.021135, Texas Government Code, which authorizes HHSC to retain an amount equal to the estimated costs necessary to administer the program for which the money is received.

Comment: Commenter requests that HHSC rollover unused application fees to subsequent uncompensated care program years.

Response: HHSC disagrees with the commenter. HHSC is only able to utilize the funds collected pursuant to Section 531.021135, Texas Government Code. Because program applicants may change from year to year, it is appropriate that only funds collected from a given program year be used to support administrative expenditures by HHSC for that program year. In the event that the amount of funds collected exceeds the applicable expenditures, HHSC will issue a pro-rata refund to all providers who paid the fee. No changes to the rule were made in response to this comment.

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32; and Texas Government Code §531.021135, which requires HHSC to adopt rules necessary to implement the section.

The new section affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32.

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

Filed with the Office of the Secretary of State on November 8, 2021.

TRD-202104467

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: November 28, 2021
Proposal publication date: October 8, 2021
For further information, please call: (512) 424-6637

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 26. FOOD AND NUTRITION DIVISION

SUBCHAPTER B. NUTRITION WORKING GROUPS

4 TAC §26.20

The Texas Department of Agriculture (Department) adopts the repeal of 4 Texas Administrative Code §26.20, regarding the Early Childhood Health and Nutrition Interagency Council. The repeal is adopted without changes to the proposed text as published in the October 1, 2021, issue of the *Texas Register* (46 TexReg 6457). The rule will not be republished.

The Early Childhood Health and Nutrition Interagency Council, which was created by Chapter 116, Texas Health and Safety Code, previously issued its final report and is no longer operational. Section 56 of Senate Bill 703, 87th Texas Legislature, Regular Session (2021), among other things, repealed Chapter 116, Texas Health and Safety Code. As a result of the repeal of Chapter 116, Texas Health and Safety Code, rules for the Early Childhood Health and Nutrition Interagency Council are no longer necessary.

The Department received no comments on the repeal.

The repeal is adopted under Section 12.016 of the Texas Agriculture Code, which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the Code.

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

Filed with the Office of the Secretary of State on November 5, 2021.

TRD-202104452
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Effective date: November 25, 2021
Proposal publication date: October 1, 2021
For further information, please call: (512) 936-9360

TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER A. GENERAL RULES

7 TAC §91.121

The Credit Union Commission (the Commission) adopts amendments to Texas Administrative Code, Title 7, Chapter 91, Subchapter A, §91.121, concerning Complaint Notices and Procedures, without changes to the proposed text as published in the September 24, 2021, issue of the *Texas Register* (46 TexReg 6323). The amendments will not be republished.

The amended rule changes are intended to incorporate SB 707's redesign of Finance Code Section 15.408 from provisions previously found in Section 15.409 and further amendments providing for additional data element tracking and annual reporting related to complaints filed with the Department against chartered credit unions.

The proposed amendments to subsection (a) amend the legal citation to reflect the redesign of the Finance Code created by the passage of SB 707.

The proposed amendments to subsection (c)(2) represent a grammar correction.

The proposed amendments to subsection (c)(4) address grammar corrections and incorporate language added to the Finance Code by the passage of SB 707.

The proposed amendments to subsection (c)(5) address grammar changes to clarify the meaning of subsection (c)(5).

The proposed amendments to subsection (c)(7) address language changes required by the passage of SB 707 which specifically involves additional data elements to be tracked in the complaint process.

The proposed amendments to subsection (d) address a grammar edit.

The proposed new subsection (f) incorporates the Department's annual reporting requirement initiated as a result of the passage of SB 707.

The Commission received no written comments on the proposed amendments to the rule.

The rule changes are adopted under Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Texas Finance Code, Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code.

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

Filed with the Office of the Secretary of State on November 8, 2021.

TRD-202104462

John J. Kolhoff

Commissioner

Credit Union Department

Effective date: November 28, 2021

Proposal publication date: September 24, 2021

For further information, please call: (512) 837-9236



SUBCHAPTER C. MEMBERS

7 TAC §91.301

The Credit Union Commission (the Commission) adopts the amendments to 7 TAC, Chapter 91, Subchapter C, §91.301, concerning field of membership, without changes to the proposed text as published in the September 24, 2021, issue of the *Texas Register* (46 TexReg 6326). The amendments will not be republished.

The amended rule is adopted to ensure consistency with the field of membership language provided by Texas Finance Code Section 122.051, to recognize the growing consumer expectation of, operational efficiencies obtained through and safety and soundness implications of, digital delivery of financial services, and ensure competitiveness with the National Credit Union Administration (NCUA) field of membership rules.

On March 19, 2020, the State of Texas issued its first Declaration of a Public Health Disaster in response to the Covid-19 Pandemic. Similar declarations occurred throughout the country at the national, state, county and municipal level, and indeed throughout the world. As a result, the delivery of financial services under appropriate safety standards, including significant restrictions on physical interaction, made providing services through digital channels an important component of the credit union industry's ability to continue their statutory mission of providing convenient, safe and competitive financial services to their memberships.

Texas chartered credit unions worked diligently to utilize digital channels in conjunction with their diverse physical presence to ensure Texas consumers had full and unfettered access to their funds and necessary loan products. Further, access through digital channels was a major contributor toward the implementation of national, state and local programs designed to assist various economically impacted groups and provide broad support to mitigate the negative impact of the pandemic to the overall economy. Finally, the ability to react appropriately during a disaster using digital services evidenced itself as an important component of an institution's ability to maintain itself as a safe, sound and viable entity. As a result, the digital delivery of financial services was proven to be not only a matter of consumer convenience, but one of safety and soundness relating to the diversity of programs available to meet the industry's mission as well as public policy relating to the ability to react to significant adverse scenarios and maintain a viable industry.

As the Commission reviewed §91.301, it noted that the rule does not consider digital delivery channels as a component of an institution's ability to serve its membership despite the safety and soundness, public policy and consumer convenience implications. It was also noted that the limitation in recognizing digital financial services imposed by §91.301 is beyond the field of membership requirements outlined by Texas Finance Code Section 122.051, and in direct contravention to the legislative intent outlined by Texas Finance Code Section 15.402 (b-1).

The purpose of the amendments to §91.301 are to remove the local service area definition which exceeds the legislative requirements found in Texas Finance Code Section 122.051 and to allow the commissioner to consider an institution's ability to provide financial services through digital channels to meet the needs of its membership. The amendments will provide credit unions the full extent of the field of membership provisions found in the Texas Finance Code and will help ensure parity with both federal and foreign state credit unions doing business in Texas.

The changes within §91.301(a) removes the definition of local service area and related physical office requirement to allow the commissioner to consider the ability of an institution to provide digital delivery channels as a viable option in its ability to serve its membership.

The deletion of §91.301(e)(2) removes the related physical office requirements for an approved underserved community field of membership to ensure the same consideration of digital delivery of financial services is available to the commissioner.

The Commission received eight (8) written comments on the proposed amendments to the rule. All comments supported the proposed modifications.

The rule changes are adopted under Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Texas Finance Code, Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code.

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

Filed with the Office of the Secretary of State on November 8, 2021.

TRD-202104461

John J. Kolhoff

Commissioner

Credit Union Department

Effective date: November 28, 2021

Proposal publication date: September 24, 2021

For further information, please call: (512) 837-9236



TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 13. TEXAS HISTORIC PRESERVATION TAX CREDIT PROGRAM

13 TAC §13.1, §13.5

The Texas Historical Commission (Commission) adopts amendments to 13 Texas Administrative Code, §13.1 and §13.5, concerning the Texas Historic Preservation Tax Credit Program. The rules are adopted without changes to the proposed text as published in the August 13, 2021, issue of the *Texas Register* (46 TexReg 4934). The rules will not be republished.

The amendments collectively clarify certain program definitions and requirements, through edits, additions, and deletions.

Section 13.1 provides definitions for the program, which help shape application and review requirements. Superfluous information is removed from §13.1(10), which defines the Commission. Section 13.1(5), which defines eligible costs and expenses has historically copied language directly from the program statute in the Texas Tax Code. Legislation passed in the 2021 legislative session will alter this language when enacted on January 1, 2022. Rather than copy the future statute language at the time that it changes, and again when any future changes are made, this amendment provides a more general reference. Section 13.1(19) receives new language to tie the requirements for a phased development to the new definition for a project, which is now §13.1(21). This new definition provides guidance for the types of work items that make up a project that can be submitted as part of an application for review and approval. Amendments to §13.1(20) provide for additional forms of documentation related to a project's completion date and bring the administrative rules in line with program practice.

Section 13.5 lays out the requirements for the Part C application, which presents a completed architectural project for final certification by the Commission. Section 13.5(2) is deleted as an applicant's tax identification numbers are not required for the Commission's purposes and have not been collected. New §13.5(4), which outlines required documentation of a placed in service date, is amended to reflect the edits to §13.1(20).

PUBLIC COMMENT

No comments pertaining to these rule revisions were received during the thirty-day period following publication on August 13, 2021 in the *Texas Register*.

These amendments are adopted under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably effect the purposes of the Commission, including the Commission's oversight authority regarding the Texas Historic Preservation Tax Credit Program and under Texas Government Code §171.909 which authorizes the Commission to adopt rules necessary to implement the Tax Credit for Certified Rehabilitation of Certified Historic Structures under the Texas Franchise Tax. The Commission interprets this authority as allowing for the revision of application procedures and formats.

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

Filed with the Office of the Secretary of State on November 8, 2021.

TRD-202104466

Mark Wolfe

Executive Director

Texas Historical Commission

Effective date: November 28, 2021

Proposal publication date: August 13, 2021

For further information, please call: (512) 463-6218



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER AA. COMMISSIONER'S
RULES ON SCHOOL FINANCE

19 TAC §61.1006

The Texas Education Agency adopts an amendment to §61.1006, concerning foundation school program funding for reimbursement of disaster remediation costs. The amendment was adopted without changes to the proposed text as published in the September 3, 2021 issue of the *Texas Register* (46 TexReg 5520) and will not be republished. The adopted amendment reflects changes made by House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021, by establishing provisions related to the 2021 North American winter storm (Winter Storm Uri).

REASONED JUSTIFICATION: HB 1525, 87th Texas Legislature, Regular Session, 2021, added TEC, §48.2611, One-Time Reimbursement for Winter Storm Uri. The new statute establishes provisions to include reimbursement for costs incurred by school districts as a result of Winter Storm Uri, including any electricity price increases.

The adopted amendment implements HB 1525 by adding new subsection (n) to address the reimbursement.

The amendment allows the commissioner to provide funding from amounts appropriated for Winter Storm Uri to the disaster contingency fund and/or Foundation School Program funds available for disaster remediation costs if it is determined that costs exceed the amount to which school districts are entitled. To be eligible for reimbursement, a school district or an open-enrollment charter school will be required to submit an application and a costs sheet detailing un-reimbursed storm-related costs not covered by the Federal Emergency Management Agency (FEMA), insurance proceeds, or other sources such as philanthropic funds.

The new subsection will expire on September 1, 2023, to align with expiration of statutory authority under TEC, §48.2611.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began August 20, 2021, and ended September 20, 2021. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §48.2611, as added by House Bill 1525, 87th Texas Legislature, Regular Session, 2021, which requires Texas Education Agency to provide reimbursement to school districts in accordance with TEC, §48.261, for costs incurred as a result of the 2021 North American winter storm (Winter Storm Uri), including any resulting electricity price increases.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §48.2611, as added by House Bill 1525, 87th Texas Legislature, Regular Session, 2021.

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

Filed with the Office of the Secretary of State on November 3, 2021.

TRD-202104432

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: November 23, 2021

Proposal publication date: September 3, 2021

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



TITLE 22. EXAMINING BOARDS

**PART 8. TEXAS APPRAISER
LICENSING AND CERTIFICATION
BOARD**

**CHAPTER 153. RULES RELATING TO
PROVISIONS OF THE TEXAS APPRAISER
LICENSING AND CERTIFICATION ACT**

22 TAC §153.24

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to §153.24, Complaint Processing, without changes to the proposed text as published in the September 3, 2021, issue of the *Texas Register* (46 TexReg 5526). The rule will not be republished.

The amendments outline a process that allows complaint cases resulting in a contingent dismissal to be closed at the time an agreement is reached between the parties as opposed to the current process in which the case is closed after completion of the required remedial training. The change results in more accurate reporting of complaint resolution timeframes.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code §1103.151 which authorizes TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee.

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

Filed with the Office of the Secretary of State on November 5, 2021.

TRD-202104455

Kathleen Santos

General Counsel

Texas Appraiser Licensing and Certification Board

Effective date: November 25, 2021

Proposal publication date: September 3, 2021

For further information, please call: (512) 936-3652



**CHAPTER 159. RULES RELATING TO THE
PROVISIONS OF THE TEXAS APPRAISAL
MANAGEMENT COMPANY REGISTRATION
AND REGULATION ACT**

22 TAC §159.204

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to §159.204, Complaint Processing, without changes to the proposed text, as published in the September 3, 2021, issue of the *Texas Register* (46 TexReg 5529). The rule will not be republished.

The amendments outline a process that allows complaint cases resulting in a contingent dismissal to be closed at the time an agreement is reached between the parties as opposed to the current process in which the case is closed after completion of the required remedial training. The change results in more accurate reporting of complaint resolution timeframes.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code §1104.051, which authorizes TALCB to adopt rules necessary to administer Chapter 1104.

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

Filed with the Office of the Secretary of State on November 5, 2021.

TRD-202104456

Kathleen Santos

General Counsel

Texas Appraiser Licensing and Certification Board

Effective date: November 25, 2021

Proposal publication date: September 3, 2021

For further information, please call: (512) 936-3652



PART 11. TEXAS BOARD OF NURSING

CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §213.28

The Texas Board of Nursing (Board) adopts amendments to §213.28, relating to Licensure of Individuals with Criminal History, without changes to the proposed text as published in the September 10, 2021, edition of the *Texas Register* (46 TexReg 5724). The rule will not be republished.

Reasoned Justification. The amendments are adopted under the authority of the Occupations Code §301.151 and House Bills (HB) 375 and 757, both enacted during the 87th Legislative Session and both effective September 1, 2021. HB 375 amends the existing criminal offense found in the Texas Penal Code §21.02, *Continuous Sexual Abuse of Young Child or Children*, to include disabled individuals. This offense is currently specified in the enumerated list of crimes in the Occupations Code §301.4535 that mandates licensure revocation and denial and is included in the Board's Disciplinary Guidelines for Criminal Conduct (Guidelines). The adopted amendments to the Guidelines, located at §213.28(c), amend the title of this criminal offense for consistency with the statutory change made by HB 375.

HB 757 prohibits a licensing agency from denying, suspending, or revoking a license based upon a deferred adjudication that has been successfully completed and dismissed, except in certain, specified circumstances. Under the terms of the bill, a successfully completed deferred adjudication may be considered by a licensing agency when issuing, renewing, denying, or revok-

ing a license if the offense is listed in the Texas Code of Criminal Procedure Article 42A.054(a); is described by the Texas Code of Criminal Procedure Article 62.001(5) or (6); is committed under Texas Penal Code Chapter 21 or 43; or is related to the activity or conduct for which the individual seeks or holds the license. Further, an agency may also consider a completed deferred adjudication if the profession for which the individual holds or seeks a license involves direct contact with children in the normal course of official duties or duties for which the license is required.

The adopted amendments to §213.28 are necessary for consistency with these statutory directives. Board Rule 213.28 currently requires a criminal offense to be *directly* related to the practice of nursing in order for the Board to consider the offense in licensure decisions. As such, the Board finds the majority of Rule 213.28 already complies with the mandates of HB 757. The adopted amendments make minor changes to the rule text, however, to incorporate the additional exception permitted by HB 757 (Texas Code of Criminal Procedure Article 42A.111(d)(4)(B)) into the rule. The remaining adopted amendments make editorial changes for additional clarity.

How the Section Will Function. The amendments make one change to the Board's Guidelines, located in §213.28(c). The adopted amendment to the Guidelines changes the title of the listed offense from *Continuous Sexual Abuse of Young Child or Children* to *Continuous Sexual Abuse of Young Child or Disabled Individual* for compliance with the statutory changes made by HB 375.

The adopted change to §213.28(a) includes a reference to the Code of Criminal Procedure Article 42A.111 because the changes made by HB 757 govern the criteria to be used by the Board in determining the effect of criminal history on nursing licensure and eligibility. The adopted change to §213.28(c) incorporates one of the statutory exceptions provided by HB 757 and provides that the Board may consider an individual's prior deferred adjudication community supervision, even if successfully completed, in its licensure decisions, since the practice of nursing may involve direct contact with children in the normal course of official nursing duties. The adopted changes to §213.28(g) and (j) make editorial changes to the section for additional clarity.

Public Comment. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the authority of the Occupations Code §301.151 and amended Code of Criminal Procedure Article 42A.111 and Occupations Code §301.4535, effective September 1, 2021.

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Amended Article 42A.111(c-1), effective September 1, 2021, provides that subject to subsection (d), an offense for which the defendant received a dismissal and discharge under this article may not be used as grounds for denying issuance of a professional or occupational license or certificate to, or suspending or revoking the professional or occupational license or certificate

of, an individual otherwise entitled to or qualified for the license or certificate.

Amended Article 42A.111(d)(4), effective September 1, 2021, provides that, for any defendant who receives a dismissal and discharge under this article, if the defendant is an applicant for or the holder of a professional or occupational license or certificate, the licensing agency may consider the fact that the defendant previously has received deferred adjudication community supervision in issuing, renewing, denying, or revoking a license or certificate if: (A) the defendant was placed on deferred adjudication community supervision for an offense: (i) listed in Article 42A.054(a); (ii) described by Article 62.001(5) or (6); (iii) committed under Chapter 21 or 43, Penal Code; or (iv) related to the activity or conduct for which the person seeks or holds the license; (B) the profession for which the defendant holds or seeks a license or certificate involves direct contact with children in the normal course of official duties or duties for which the license or certification is required; or (C) the defendant is an applicant for or the holder of a license or certificate issued under Chapter 1701, Occupations Code.

Amended §301.4535(a), effective September 1, 2021, provides that the Board shall suspend a nurse's license or refuse to issue a license to an applicant on proof that the nurse or applicant has been initially convicted of: (1) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or manslaughter under Section 19.04, Penal Code; (2) kidnapping or unlawful restraint under Chapter 20, Penal Code, and the offense was punished as a felony or state jail felony; (3) sexual assault under Section 22.011, Penal Code; (4) aggravated sexual assault under Section 22.021, Penal Code; (5) continuous sexual abuse of young child or disabled individual under Section 21.02, Penal Code, or indecency with a child under Section 21.11, Penal Code; (6) aggravated assault under Section 22.02, Penal Code; (7) intentionally, knowingly, or recklessly injuring a child, elderly individual, or disabled individual under Section 22.04, Penal Code; (8) intentionally, knowingly, or recklessly abandoning or endangering a child under Section 22.041, Penal Code; (9) aiding suicide under Section 22.08, Penal Code, and the offense was punished as a state jail felony; (10) an offense involving a violation of certain court orders or conditions of bond under Section 25.07, 25.071, or 25.072, Penal Code, punished as a felony; (11) an agreement to abduct a child from custody under Section 25.031, Penal Code; (12) the sale or purchase of a child under Section 25.08, Penal Code; (13) robbery under Section 29.02, Penal Code; (14) aggravated robbery under Section 29.03, Penal Code; (15) an offense for which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or (16) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense listed in this subsection.

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

Filed with the Office of the Secretary of State on November 4, 2021.

TRD-202104437

Jena Abel

Deputy General Counsel

Texas Board of Nursing

Effective date: November 24, 2021

Proposal publication date: September 10, 2021

For further information, please call: (512) 305-6822



22 TAC §213.33

The Texas Board of Nursing (Board) adopts amendments to 22 Texas Administrative Code §213.33, relating to Factors Considered for Imposition of Penalties/Sanctions, without changes to the proposed text published in the September 10, 2021, edition of the *Texas Register* (46 TexReg 5726). The rule will not be republished.

Reasoned Justification. The amendments are being adopted under the authority of the Occupations Code §301.151 and House Bill (HB) 1434, effective September 1, 2021. HB 1434, enacted during the 87th Legislative Session, created a new disciplinary cause of action for practitioners who conduct pelvic examinations on unconscious or anesthetized patients without proper informed consent, where the procedure is not within the standard scope of a scheduled procedure or diagnostic examination, where the examination is not necessary for the diagnosis or treatment of the patient's medical condition, or where the examination is not for the purpose of collecting evidence. The new disciplinary cause of action is located in the Occupations Code §301.452(b)(13). The adopted amendments to the Board's Disciplinary Matrix (Matrix) are necessary for consistency with this statutory change.

First, the adopted amendments add a new subsection to the Matrix that corresponds to the new disciplinary cause of action. The adopted amendments also renumber existing §301.452(b)(13) accordingly. The adopted amendments also include a range of disciplinary sanctions applicable to the new violation and aggravating and mitigating factors that could apply to a violation of §301.452(b)(13). The adopted range of sanctions includes licensure suspension, including temporary suspension on an emergency basis under the Occupations Code §301.455; licensure revocation, or licensure denial. The Board has determined that these levels of discipline are appropriate given the seriousness of the conduct that would constitute a violation of §301.452(b)(13). Further, the aggravating factors include actual patient harm; impairment at the time of the incident; severity of patient harm; prior complaints or discipline for similar conduct; and patient vulnerability. These factors, if present in a given case, could justify a higher sanction. The adopted mitigating factors include mistaken consent or a good faith belief that a statutory exception applied. These factors, if present in a given case, could justify a lower sanction.

The remaining adopted amendments to the Matrix correct outdated references to website addresses; remove obsolete provisions; make editorial changes; and clarify sanctions that are not available as the result of a contested case proceeding. Specifically, the adopted amendments make clear that participation in a peer assistance program, such as the Texas Peer Assistance Program for Nurses (TPAPN), or participation in a targeted assessment and remediation program, such as the Knowledge, Skills, Training, Assessment, and Research Program (KSTAR), are not available as the result of a contested case hearing. Like a corrective action, participation in a targeted assessment and

remediation program is only available as a condition of settlement. See 22 Texas Administrative Code §213.32(4) (relating to Corrective Action Proceedings and Schedule of Administrative Fines) and §213.35(k)(2) (relating to Targeted Assessment and Remediation Pilot Program). Likewise, participation in a peer assistance program must be voluntary, not forced, as the program contains rigorous requirements for the participant's successful completion of the program. See 22 Texas Administrative Code §217.13 (relating to Peer Assistance Program). The adopted amendments clarify the applicability of these existing rules and policies of the Board as they apply to contested case proceedings. The remaining adopted amendments to §213.33 make editorial, non-substantive changes to the section.

How the Section Will Function. The adopted rule amendments make several changes to the Board's Disciplinary Matrix, located in §213.33(b). The most substantial changes relate to new §301.452(b)(13). Existing §301.452(b)(13) has been re-numbered as §301.452(b)(14). The adopted changes to new §301.452(b)(13) include a range of new disciplinary sanctions, as well as aggravating and mitigating factors applicable to the new disciplinary cause of action. Other adopted changes affect §301.452(b)(1) - (b)(4) and (b)(7) - (b)(12). These adopted changes correct outdated references to website addresses in (b)(4) and (b)(8) - (b)(10); remove obsolete provisions from (b)(9); make editorial changes in (b)(1) - (b)(3) and (b)(7), (b)(10), (b)(11), and (b)(12); and clarify sanctions that are not available as the result of a contested case proceeding in (b)(9), (b)(12), and (b)(14). The adopted amendments also make editorial, non-substantive changes to §213.33(c).

Public Comment. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the authority of the Occupations Code §301.151 and amended Occupations Code §301.452(b).

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.452(b), amended and effective September 1, 2021, provides that a person is subject to denial of a license or to disciplinary action for: (i) a violation of Chapter 301, rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301; (ii) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing; (iii) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude; (iv) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude; (v) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered; (vi) impersonating or acting as a proxy for another person in the licensing examination required under Section 301.253 or 301.255; (vii) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing; (viii) revocation, suspension, or denial of, or any other action relating to, the person's

license or privilege to practice nursing in another jurisdiction or under federal law; (ix) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient; (x) unprofessional conduct in the practice of nursing that is likely to deceive, defraud, or injure a patient or the public; (xi) adjudication of mental incompetency; (xii) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; (xiii) performing or delegating to another individual the performance of a pelvic examination on an anesthetized or unconscious patient in violation of Section 167A.002, Health and Safety Code; or (xiv) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.

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

Filed with the Office of the Secretary of State on November 3, 2021.

TRD-202104426

Jena Abel

Deputy General Counsel

Texas Board of Nursing

Effective date: November 23, 2021

Proposal publication date: September 10, 2021

For further information, please call: (512) 305-6822



CHAPTER 214. VOCATIONAL NURSING EDUCATION

22 TAC §214.4

The Texas Board of Nursing (Board) adopts amendments to 22 Texas Administrative Code §214.4(c), relating to Approval, without changes to the proposed text published in the September 10, 2021, edition of the *Texas Register* (46 TexReg 5728) and will not be republished.

Reasoned Justification. House Bill (HB) 2426, enacted by the 80th Legislature, required the Board to identify national nursing accreditation agencies recognized by the United States Department of Education with standards equivalent to the Board's ongoing approval standards. In order to implement the requirements of HB 2426, the Board conducted a comprehensive comparative review of national accreditation standards and identified two accreditation agencies with equivalent standards: the Accreditation Commission for Education in Nursing (ACEN) and the Commission on Collegiate Nursing Education (CCNE). Based upon these findings, the Board adopted Education Guideline 3.2.4.a, which provided guidance to accredited programs regarding their exemption from compliance with certain Board rules. This guidance was also included in Board Rule 214.4. However, the rule did not include a specific reference to ACEN or CCNE at that time. In October 2012, Board Rule 214.4(c)(8) was amended to specifically incorporate the title of Education Guideline 3.2.4.a. into the rule. The title of Education Guideline 3.2.4.a specifically referenced the names of the Board's approved national nursing accreditation agencies, the ACEN and CCNE. These two accreditation agencies have remained the

only accreditation agencies recognized by the Board until recently.

The National League for Nursing (NLN) launched a third nursing accreditation organization in 2013, and 115 education programs across 29 states representing all program types have been pre-accredited or accredited by the NLN Commission for Nursing Education Accreditation (CNEA). On May 25, 2021, the NLN CNEA was recognized by the United States Department of Education as a fully accrediting agency for an initial five-year period. At its July 2021 meeting, the Board voted to add the NLN CNEA to its list of approved accreditation agencies, recognized by the United States Department of Education, and determined to have standards equivalent to the Board's ongoing approval standards for nursing education programs. Due to the addition of an additional accreditation agency, the title of Education Guideline 3.2.4.a was also amended to eliminate reference to the specific approved accreditation agencies. Instead, the title of the guideline was amended to refer more generically to Board-approved national nursing accreditation agencies.

The adopted amendments to §214.4(c)(8) are necessary for consistency with these recent changes made by the Board. The adopted amendments reference the newly amended title of Education Guideline 3.2.4.a by referring generically to Board-approved national nursing accreditation organizations instead of including specific reference to the ACEN and CCNE.

How the Section Will Function. Adopted §214.4(c)(8) references the newly amended title of Board Education Guideline 3.2.4.a: Specific Exemptions from Education Rule Requirements for Nursing Education Programs Accredited by a Board-Approved National Nursing Accreditation Organization.

Public Comment. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the authority of the Occupations Code §301.151 and §301.157(b).

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.157(b) provides that the Board shall: (1) prescribe two programs of study to prepare a person to receive an initial vocational nurse license under Chapter 301 as follows: (A) a program conducted by an educational unit in nursing within the structure of a school, including a college, university, or proprietary school; and (B) a program conducted by a hospital; (2) prescribe and publish the minimum requirements and standards for a course of study in each program that prepares registered nurses or vocational nurses; (3) prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses; (4) approve schools of nursing and educational programs that meet the Board's requirements; (5) select one or more national nursing accrediting agencies, recognized by the United States Department of Education and determined by the Board to have acceptable standards, to accredit schools of nursing and educational programs; and (6) deny or withdraw approval from a school of nursing or educational program that:

(A) fails to meet the prescribed course of study or other standard under which it sought approval by the Board; (B) fails to meet or maintain accreditation with the national nursing accrediting agency selected by the Board under Subdivision (5) under which it was approved or sought approval by the Board; or (C) fails to maintain the approval of the state board of nursing of another state and the board under which it was approved.

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

Filed with the Office of the Secretary of State on November 3, 2021.

TRD-202104431

Jena Abel

Deputy General Counsel

Texas Board of Nursing

Effective date: November 23, 2021

Proposal publication date: September 10, 2021

For further information, please call: (512) 305-6822

◆ ◆ ◆

CHAPTER 215. PROFESSIONAL NURSING EDUCATION

22 TAC §215.2

The Texas Board of Nursing (Board) adopts amendments to §215.2, relating to Definitions, without changes to the proposed text published in the September 10, 2021, edition of the *Texas Register* (46 TexReg 5730) and will not be republished.

Reasoned Justification. 22 Texas Administrative Code Chapter 215 relates to professional nursing education programs, not vocational nursing education programs. The adopted amendments are necessary to correct a typographical error in §215.2 from *vocational* to *professional*.

How the Section Will Function. Adopted §215.2(4) defines a professional nursing education program.

Public Comments. The Board did not receive any public comments on the proposal.

Statutory Authority. The amendments are adopted under the authority of the Occupations Code §301.151 and §301.157(a) & (b).

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.157(a) provides that the Board shall prescribe three programs of study to prepare a person to receive an initial license as a registered nurse under Chapter 301 as follows: (1) a baccalaureate degree program that is conducted by an educational unit in nursing that is a part of a senior college or university and that leads to a baccalaureate degree in nursing; (2) an associate degree program that is conducted by an educational unit in nurs-

ing within the structure of a college or a university and that leads to an associate degree in nursing; and (3) a diploma program that is conducted by a single-purpose school, usually under the control of a hospital, and that leads to a diploma in nursing.

Section 301.157(b) provides that the Board shall: (1) prescribe two programs of study to prepare a person to receive an initial vocational nurse license under Chapter 301 as follows: (A) a program conducted by an educational unit in nursing within the structure of a school, including a college, university, or proprietary school; and (B) a program conducted by a hospital; (2) prescribe and publish the minimum requirements and standards for a course of study in each program that prepares registered nurses or vocational nurses; (3) prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses; (4) approve schools of nursing and educational programs that meet the Board's requirements; (5) select one or more national nursing accrediting agencies, recognized by the United States Department of Education and determined by the Board to have acceptable standards, to accredit schools of nursing and educational programs; and (6) deny or withdraw approval from a school of nursing or educational program that: (A) fails to meet the prescribed course of study or other standard under which it sought approval by the Board; (B) fails to meet or maintain accreditation with the national nursing accrediting agency selected by the Board under Subdivision (5) under which it was approved or sought approval by the Board; or (C) fails to maintain the approval of the state board of nursing of another state and the board under which it was approved.

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

Filed with the Office of the Secretary of State on November 3, 2021.

TRD-202104435

Jena Abel

Deputy General Counsel

Texas Board of Nursing

Effective date: November 23, 2021

Proposal publication date: September 10, 2021

For further information, please call: (512) 305-6822



22 TAC §215.4

The Texas Board of Nursing (Board) adopts amendments to §215.4(c), relating to Approval, without changes to the proposed text published in the September 10, 2021, edition of the *Texas Register* (46 TexReg 5731). The rule will not be republished.

Reasoned Justification. House Bill (HB) 2426, enacted by the 80th Legislature, required the Board to identify national nursing accreditation agencies recognized by the United States Department of Education with standards equivalent to the Board's ongoing approval standards. In order to implement the requirements of HB 2426, the Board conducted a comprehensive comparative review of national accreditation standards and identified two accreditation agencies with equivalent standards: the Accreditation Commission for Education in Nursing (ACEN) and the Commission on Collegiate Nursing Education (CCNE). Based upon these findings, the Board adopted Education Guideline

3.2.4.a, which provided guidance to accredited programs regarding their exemption from compliance with certain Board rules. This guidance was also included in Board Rule 215.4. However, the rule did not include a specific reference to ACEN or CCNE at that time. In October 2012, Board Rule 215.4(c)(8) was amended to specifically incorporate the title of Education Guideline 3.2.4.a. into the rule. The title of Education Guideline 3.2.4.a specifically referenced the names of the Board's approved national nursing accreditation agencies, the ACEN and CCNE. These two accreditation agencies have remained the only accreditation agencies recognized by the Board until recently.

The National League for Nursing (NLN) launched a third nursing accreditation organization in 2013, and 115 education programs across 29 states representing all program types have been pre-accredited or accredited by the NLN Commission for Nursing Education Accreditation (CNEA). On May 25, 2021, the NLN CNEA was recognized by the United States Department of Education as a fully accrediting agency for an initial five-year period. At its July 2021 meeting, the Board voted to add the NLN CNEA to its list of approved accreditation agencies, recognized by the United States Department of Education, and determined to have standards equivalent to the Board's ongoing approval standards for nursing education programs. Due to the addition of an additional accreditation agency, the title of Education Guideline 3.2.4.a was also amended to eliminate reference to the specific approved accreditation agencies. Instead, the title of the guideline was amended to refer more generically to Board-approved national nursing accreditation agencies.

The adopted amendments to §215.4(c)(8) are necessary for consistency with these recent changes made by the Board. The adopted amendments reference the newly amended title of Education Guideline 3.2.4.a by referring generically to Board-approved national nursing accreditation organizations instead of including specific reference to the ACEN and CCNE.

How the Section Will Function. Adopted §215.4(c)(8) references the newly amended title of Board Education Guideline 3.2.4.a: Specific Exemptions from Education Rule Requirements for Nursing Education Programs Accredited by a Board-Approved National Nursing Accreditation Organization.

Public Comment. The Board did not receive any public comments on the proposal.

Statutory Authority. The amendments are adopted under the authority of the Occupations Code §301.151 and §301.157(b).

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.157(b) provides that the Board shall: (1) prescribe two programs of study to prepare a person to receive an initial vocational nurse license under Chapter 301 as follows: (A) a program conducted by an educational unit in nursing within the structure of a school, including a college, university, or proprietary school; and (B) a program conducted by a hospital; (2) prescribe and publish the minimum requirements and standards for a course of study in each program that prepares

registered nurses or vocational nurses; (3) prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses; (4) approve schools of nursing and educational programs that meet the Board's requirements; (5) select one or more national nursing accrediting agencies, recognized by the United States Department of Education and determined by the Board to have acceptable standards, to accredit schools of nursing and educational programs; and (6) deny or withdraw approval from a school of nursing or educational program that: (A) fails to meet the prescribed course of study or other standard under which it sought approval by the Board; (B) fails to meet or maintain accreditation with the national nursing accrediting agency selected by the Board under Subdivision (5) under which it was approved or sought approval by the Board; or (C) fails to maintain the approval of the state board of nursing of another state and the board under which it was approved.

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

Filed with the Office of the Secretary of State on November 3, 2021.

TRD-202104433

Jena Abel

Deputy General Counsel

Texas Board of Nursing

Effective date: November 23, 2021

Proposal publication date: September 10, 2021

For further information, please call: (512) 305-6822



CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.24

The Texas Board of Nursing (Board) adopts amendments to §217.24(e), relating to *Telemedicine Medical Service Prescriptions*, with changes to the proposed text published in the August 13, 2021, issue of the *Texas Register* (46 TexReg 4971). The rule will be republished.

Changes to the Adopted Text. The Board received two joint comments on the proposal. In response to the written comments on the published proposal, the Board has made changes to §217.24(e)(1)(A)(i) and (iii) as adopted. These changes, however, do not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice. Further, the Board believes these changes address some of the commenters' concerns.

Reasoned Justification. On March 13, 2020, the Governor of the State of Texas certified COVID-19 as posing an imminent threat of disaster to the public health and safety and declared a state of disaster in all counties of Texas. On March 23, 2020, the Office of the Governor granted a waiver of 22 Texas Administrative Code §217.24(e), which prohibits an advanced practice registered nurse (APRN) from treating chronic pain with scheduled drugs through the use of telemedicine medical services, unless otherwise permitted under federal and state law. The waiver, however, expired on June 6, 2020.

The Board held a public meeting on June 8, 2020, to consider the adoption of an emergency rule to permit APRNs to treat chronic pain with scheduled drugs through the use of telemedicine medical services under certain conditions during the COVID-19 pandemic. At the conclusion of the meeting, the Board voted to adopt emergency amendments to 22 Texas Administrative Code §217.24(e). Subsequently, the Board found that the continued effects of the COVID-19 pandemic necessitated the continuation of emergency amendments to §217.24(e) and re-adopted emergency amendments to the section several times, the last adoption taking effect on August 1, 2021. During its public meeting on July 30, 2021, the Board determined that permanent rule amendments to §217.24(e), consistent with those amendments adopted on an emergency basis during the pandemic, should also be considered due to the continuation of the pandemic and recent increases in the number of new COVID cases throughout the state. Further, the Board determined it would routinely evaluate the continued need for a permanent rule as the pandemic progresses to ensure ongoing compliance with state and federal law and to determine when, and if, the necessity of the permanent rule ceases to exist.

How the Section Will Function. The adopted amendments to §217.24(e) are necessary to allow APRNs to provide necessary treatment to established patients being treated for chronic pain while mitigating the risk of exposure to COVID-19. Under the adopted amendments, the treatment of chronic pain with scheduled drugs through the use of telemedicine medical services by any means other than via audio and video two-way communication is prohibited, unless certain conditions are met. First, a patient must be an established patient of the APRN receiving treatment for chronic pain. Second, the patient must be receiving a prescription that is identical to a prescription issued at the previous visit. Third, the patient must have been seen by the prescribing APRN or physician or health professional as defined in Tex. Occ. Code §111.001(1) in the last 90 days, either in-person or via telemedicine using audio and video two-way communication. These requirements are consistent with the rules adopted by the Texas Medical Board at 22 Texas Administrative Code §174.5 (relating to Issuance of Prescriptions) published in the October 1, 2021, edition of the *Texas Register* (46 TexReg 6544), as well as the provisions of federal law that currently permit the use of telemedicine medical services for the prescription of controlled substances during the COVID-19 pandemic.

Further, an APRN must exercise appropriate professional judgment in determining whether to utilize telemedicine medical services for the treatment of chronic pain with controlled substances. In order to ensure that telemedicine medical services are appropriate for the APRN to use, the adopted rule requires an APRN to give due consideration to factors that include, at a minimum, the date of the patient's last in-person visit, patient co-morbidities, and occupational related COVID-19 risks. These are not the sole, exclusive, or exhaustive factors an APRN should consider under this rule. Further, the adopted amendments only apply to those APRNs whose delegating physicians permit them to issue re-fills for patients, and the refills are limited to controlled substances contained in Schedules III through V only. If a patient is treated for chronic pain with scheduled drugs through the use of telemedicine medical services as permitted by this rule, the medical records must document the exception and the reason that a telemedicine visit was conducted instead of an in-person visit.

The remaining adopted changes make conforming changes to the definitions of the terms *acute pain* and *chronic pain*, consis-

tent with the definition used by the Texas Medical Board, in 22 Texas Administrative Code §170.2(2) and (4) (relating to Definitions).

Public Comment. The Board received two written joint comments on the proposal, one from the Texas Medical Association and the Texas Pain Society, and the other from the Texas Nurse Practitioners and the Texas Association of Nurse Anesthetists.

Comment: A joint comment was submitted by the Texas Medical Association and the Texas Pain Society. The commenters state the proposed language in subsection (e) could be impermissibly interpreted to allow independent prescribing practices, as well as other improper prescribing practices, for APRNs inconsistent with Chapter 157, Occupations Code.

The commenters state it is unclear why "prescribing APRN" in clause (iii) is standalone language when an APRN is already included in the definition of "health professional" under the applicable Occupations Code provision cited to in the same clause. The commenters state that the APRN's authority to prescribe comes from the prescribing physician's delegation authority. To prevent unintended confusion and impermissible applications of this proposed rule, the commenters recommend striking "APRN" in this clause.

The commenters further state that there may be confusion about whether the rules account for the limitations on delegated prescribing authority for controlled substances in Chapter 157. For example, Texas Occupations Code §157.0511 provides limitations on when an APRN can be delegated prescribing authority for scheduled drugs, and delegated prescription authority for Schedule II drugs are further limited to specific practice settings. Subsection (e) contains broad permissive language for the use of telemedicine medical services without including the statutory guardrails that still apply. Thus, to prevent misapplication of the law, the commenters urge the Board to be clear that nothing in the proposed rule supersedes the requirements of Chapter 157.

The commenters also ask the Board to clarify its intent in clause (iii) where it uses the language "prescribing APRN or physician or health professional defined under Chapter 111.001(1) of the Texas Occupations Code". The commenters state it is not clear how the "health professional defined under Chapter 111.001(1) of the Texas Occupations Code" language will be applied. Section 111.001(1) assigns "health professional" and "physician" the same meanings as those terms are defined in Section 1455.001, Insurance Code. In Section 1455.001(1), a "health professional" also includes a physician and a qualified individual acting under the physician's delegated authority and supervision. As drafted, the commenters state it is unclear whether the proposed amended rule could be interpreted to mean the APRN acting with delegated authority from the prescribing physician could issue a prescription to treat chronic pain via telemedicine for a patient who has been seen (in-person or via telemedicine) by a different physician (not the one delegating prescribing authority) or a different physician's delegatee in the last 90 days. The commenters state that there are legitimate reasons to permit this when a valid established patient relationship exists, such as emergencies where a previous treating physician may no longer be available. If that is the Board's intent, the commenters support this interpretation and do not recommend any changes except to add "other health professional" for proper clarity and change "chapter" to "section" for proper drafting and strike "APRN". However, if the intent is for the exception to apply narrowly to only a qualifying visit with the prescribing physician

or the prescribing physician's delegate, the commenters ask that this be clearly expressed in the rule to prevent confusion.

The commenters further state that the language proposed in clause (ii) about an "identical" prescription issued at "the previous visit" is too narrow and may unintentionally interfere with the purpose of the rule if applied as drafted. The commenters state that "identical" does not take into account flexibility in treatment needed to effectively manage chronic pain. For example, one of the goals in pain management treatment is to reduce a patient's treatment dosage when possible. A textual application of the word "identical" could limit telemedicine services from being provided in this situation, despite a similar prescription being issued previously. Second, the commenters state that, after receiving a prescription for treating chronic pain at an in-person or telemedicine visit, a patient could have a follow-up appointment within the 90-day window for various reasons and not receive another identical prescription for treating chronic pain during the last previous visit.

The commenters also state that it is important not to identify the patient as a "chronic pain" patient. The commenters state that identifying the patient in this manner unfairly stigmatizes patients who seek treatment for chronic pain. Instead, the commenters state that it should be clear that the individual is a patient, and the patient receives treatment for chronic pain.

The commenters further urge the Board to strike the additional factors in subparagraphs (B) and (C) to avoid interfering with the physician's delegation authority under Chapter 157, Occupations Code. The commenters state that the additional proposed factors in subsection (e)(1)(B) - (C) will interfere with the prescribing physician's delegated authority by limiting when the APRN can accept delegated authority from the physician to assist in providing telemedicine medical services to treat a patient with chronic pain. The commenters urge the Board to align its rules with the Texas Medical Board's rules for a unified approach in providing treatment for chronic pain through telemedicine medical services with proper delegation and supervision. A unified approach will help prevent confusion and disruption in the patient's treatment.

The commenters provide suggested language to address all of their stated concerns.

Agency Response: The Board agrees with some of the commenters' suggested changes, but not all. First, the proposed rule contains no language that alters the existing applicable statutory requirements related to delegated authority, nor does the rule purport to grant APRNs independent prescribing authority in contradiction to the existing statutory framework. In this regard, the Board declines to add the commenters' suggested language to the rule as adopted.

Second, the Board agrees that an APRN's authority to issue prescriptions is derived from the delegated authority of a specified physician, as evidenced through a properly executed prescriptive authority agreement. So, although under the proposed rule, a patient must only have been seen within the last 90 days by the prescribing APRN, physician, or other health professional, as that term is defined in Texas Occupations Code §111.001(1), the APRN may only issue the prescription if it is also properly authorized by the APRN's prescriptive authority agreement. The Board agrees that adding "other" to the phrase "health professional" will clarify the rule as adopted and agrees to make this change to the adopted rule text.

The Board agrees with the commenters that one of the goals in pain management is to reduce a patient's treatment dosage when possible. The Board also acknowledges that it may become necessary for a provider to issue a prescription to a patient that is not identical to the patient's last prescription. However, the Board declines to make changes to the rule as adopted to address those specific situations. The rule is intended to provide continuity of care for patients with chronic pain during the ongoing pandemic, when traveling to a provider's office to obtain a refill of pain medication may be overly burdensome, difficult, or dangerous. To that end, the rule allows for the issuance of identical prescriptions. The rule is not intended to address a patient's change in condition where a prior issued prescription requires modification. If a patient is requesting a reduction in a prescribed medication, for example, the APRN should evaluate the reason for the requested change, such as improved functionality, to determine if a change in the patient's plan of care is necessary. The rule is not intended to replace regular patient assessment. As such, the Board declines to make a change in this regard to the text of the rule as adopted.

In response to the comment that it is important not to identify a patient as a "chronic pain" patient, the Board has made changes to the text of the rule as adopted.

The Board declines to make any changes to subparagraphs (B) and (C) in the rule text as adopted. While an APRN practices under the delegated authority of a physician, each APRN must ensure that his/her practice complies with the minimum standards of nursing practice, including those set forth in 22 Texas Administrative Code §228.1, related to the treatment of pain. To this end, an APRN should consider the reasons why a patient being treated for chronic pain may not be appropriate for telemedicine medical services in a specific instance. The treatment of chronic pain is a highly individualized process. While telemedicine medical services are generally more convenient for many patients and providers, some patients may have individual risk factors and co-morbidities that are more appropriate for in-person assessments. While the rule provides the option for telemedicine prescribing, an APRN must ensure that such prescribing is appropriate for each individual patient, each time the patient is seen.

Finally, in response to the commenters' goal of having a unified approach in providing treatment for chronic pain through telemedicine medical services with proper delegation and supervision, the Board agrees and notes that the same proposed rule text has been in effect through the adoption of emergency rules since May 14, 2021; has been periodically reviewed and approved by the Governor's Office; and is consistent with the rules adopted by the Texas Medical Board.

Comment: A joint comment was submitted by the Texas Nurse Practitioners and the Texas Association of Nurse Anesthetists. The commenters state that they appreciate the Board moving this into their permanent rules, as opposed to continuing to renew the emergency rule, as this will alleviate uncertainty for providers moving forward.

The commenters voice concern regarding the language requiring APRNs to "consider" certain factors, including "at a minimum, the date of the patient's last in-person visit, patient co-morbidities, and occupational related COVID risks." The commenter states that, while this is sound guidance, it is unusual language to include in a rule, and the commenter is concerned about how this might be enforced. The commenter states that

it would be impossible to know for certain whether a provider had considered these factors and recommends moving them somewhere more visible to providers, such as an FAQ or other informal guidance.

The commenters further state that the requirement to "document the exception and the reason that a telemedicine visit was conducted instead of an in-person visit" is not included in the Texas Medical Board proposal on the same subject. The commenters state that this is likely because the reason for using telemedicine during the pandemic is always the same: to avoid in-person contact. The commenters state that writing that out in each patient's medical record is completely unnecessary, and the Board should not be taking action against a licensee for omitting what would be obvious to anyone reading those records.

Agency Response: The Board declines to make changes to the rule text as adopted in response to these comments. As stated previously in this adoption order in response to other comments, while an APRN practices under the delegated authority of a physician, each APRN must ensure that his/her practice complies with the minimum standards of nursing practice, including those set forth in 22 Texas Administrative Code §228.1, related to the treatment of pain. To this end, an APRN should consider the reasons why a patient being treated for chronic pain may not be appropriate for telemedicine medical services in a specific instance. The treatment of chronic pain is a highly individualized process. While telemedicine medical services are generally more convenient for many patients and providers, some patients may have individual risk factors and co-morbidities that are more appropriate for in-person assessments. While the rule provides the option for telemedicine prescribing, an APRN must ensure that such prescribing is appropriate for each individual patient, each time the patient is seen. Further, requiring the APRN to assess whether a telemedicine visit is appropriate for each patient ensures compliance with the standards required by 22 Texas Administrative Code §228.1(g).

Names of Those Commenting For and Against the Proposal.

For: None.

Against: None.

For, with changes: The Texas Medical Association; the Texas Pain Society, the Texas Nurse Practitioners; and the Texas Association of Nurse Anesthetists.

Neither for nor against, with changes: None.

Statutory Authority. The amendments are adopted under the authority of the Occupations Code §301.151.

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

§217.24. *Telemedicine Medical Service Prescriptions.*

(a) The validity of a prescription issued as a result of a telemedicine medical service is determined by the same standards that would apply to the issuance of the prescription in an in-person setting.

(b) This rule does not limit the professional judgment, discretion or decision-making authority of a licensed practitioner. A licensed

practitioner is expected to meet the standard of care and demonstrate professional practice standards and judgment, consistent with all applicable statutes and rules when issuing, dispensing, delivering, or administering a prescription medication as a result of a telemedicine medical service.

(c) A valid prescription must be:

(1) issued for a legitimate medical purpose by a practitioner as part of patient-practitioner relationship as set out in §111.005, Texas Occupations Code; and

(2) meet all other applicable laws before prescribing, dispensing, delivering or administering a dangerous drug or controlled substance.

(d) Any prescription drug orders issued as the result of a telemedicine medical service, are subject to all regulations, limitations, and prohibitions set out in the federal and Texas Controlled Substances Act, Texas Dangerous Drug Act and any other applicable federal and state law.

(e) **Limitation on Treatment of Chronic Pain.** Chronic pain is a legitimate medical condition that needs to be treated, but must be balanced with concerns over patient safety and the public health crisis involving overdose deaths. The Legislature has already put into place laws regarding the treatment of pain and requirements for registration and inspection of pain management clinics. Therefore, the Board has determined clear legislative intent exists for the limitation of chronic pain treatment through a telemedicine medical service.

(1) For purposes of this rule, chronic pain has the same definition as used in 22 Texas Administrative Code §170.2(4) (relating to Definitions).

(A) Telemedicine medical services used for the treatment of chronic pain with scheduled drugs by any means other than via audio and video two-way communication is prohibited, unless a patient:

(i) is an established patient of the APRN being treated for chronic pain;

(ii) is receiving a prescription that is identical to a prescription issued at the previous visit; and

(iii) has been seen by the prescribing APRN, physician, or other health professional as defined in Tex. Occ. Code §111.001(1) in the last 90 days, either:

(I) in-person; or

(II) via telemedicine using audio and video two-way communication.

(B) An APRN, when determining whether to utilize telemedicine medical services for the treatment of chronic pain with controlled substances as permitted by paragraph (1)(A) of this subsection, shall give due consideration to factors that include, at a minimum, the date of the patient's last in-person visit, patient co-morbidities, and occupational related COVID risks. These are not the sole, exclusive, or exhaustive factors an APRN should consider under this rule.

(C) If a patient is treated for chronic pain with scheduled drugs through the use of telemedicine medical services as permitted by paragraph (1)(A) of this subsection, the medical records must document the exception and the reason that a telemedicine visit was conducted instead of an in-person visit.

(2) For purposes of this rule, acute pain has the same definition as used in 22 Texas Administrative Code §170.2(2). Telemedicine medical services may be used for the treatment of acute pain with

scheduled drugs, unless otherwise prohibited under federal and state law.

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

Filed with the Office of the Secretary of State on November 5, 2021.

TRD-202104447

Jena Abel

Deputy General Counsel

Texas Board of Nursing

Effective date: November 25, 2021

Proposal publication date: August 13, 2021

For further information, please call: (512) 305-6822



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 181. VITAL STATISTICS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts amendments to §181.2, concerning Assuming Custody of Body; §181.22, concerning Fees Charged for Vital Records Services; and §181.30, concerning Instructions and Requirements for Filing of Amendments to Medical Certification of Certificate of Death with a Local Registrar. The amendment to §181.2 is adopted with changes to the proposed text as published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5733). This rule will be republished. The amendments to §181.22 and §181.30 are adopted without changes to the proposed text as published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5733), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments are necessary to comply with House Bill (H.B.) 1011, Senate Bill (S.B.) 798, and H.B. 4048, 87th Legislature, Regular Session, 2021.

H.B. 1011 created new Texas Health and Safety Code §193.0025, requiring DSHS to establish a process for individuals to request an expedited death certificate for religious purposes in applicable counties. The amendment to §181.2 specifies how DSHS will provide technical support, as needed, to local offices who will fulfill these requests.

S.B. 798 created new Texas Health and Safety Code §191.00491, waiving the fee for issuing a certified copy of a person's birth record to victims and the children of victims of family or dating violence. The amendment to §181.22 establishes a fee waiver for persons who meet all requirements as defined by statute and rule.

H.B. 4048 repealed Texas Health and Safety Code §193.005(a-1), thus allowing physician assistant or advanced practice resident nurse to complete the medical certification for a death certificate or a fetal death certificate in an expanded set of circum-

stances. The amendment to §181.30 removes the prior statutory limitations.

Additional amendments are adopted to update the name of the Vital Statistics Section and correct minor formatting inconsistencies.

COMMENTS

The 31-day comment period ended October 11, 2021.

During this period, DSHS received a comment regarding the proposed rules from the Texas Council on Family Violence. A summary of the comment relating to the rules and DSHS's responses follows.

Comment: The Texas Council on Family Violence suggested deleting the language "who is fleeing a living situation due to dating or family violence" from the amendment to §181.22, as they believe this language is not included within the scope of Texas Health and Safety Code §191.00491. The commenter stated that this language may unintentionally create a systemic barrier for survivors attempting to access this resource and confuse or complicate the certification process.

Response: DSHS disagrees and declines to revise the rule in response to this comment. The language in the amended §181.22 was written to align with the legislative intent of S.B. 798 to allow DSHS to use existing resources to waive the fees for those fleeing dangerous living situations. Section 181.22 establishes a fee waiver for persons who meet all requirements as defined by statute and rule.

DSHS made a minor change to §181.2(d) to add "or fetus" to align with the rule language in §181.2(a) and (b).

SUBCHAPTER A. MISCELLANEOUS PROVISIONS

25 TAC §181.2

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and efficient enforcement of Texas Health and Safety Code, Chapters 191 and 193; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

§181.2. Assuming Custody of Body.

(a) The funeral director, or person acting as such, who assumes custody of a dead body or fetus shall obtain an electronically filed report of death through a Vital Statistics Section system or complete a report of death before transporting the body. The report of death shall within 24 hours be mailed or otherwise transmitted to the Local Registrar of the district in which the death occurred or in which the body was found. A copy of the completed or electronically filed report of death as prescribed by the Vital Statistics Section shall serve as authority to transport or bury the body or fetus within this state.

(b) If a dead body or fetus is to be removed from this state, transported by common carrier within this state, or cremated, the funeral director, or person acting as such, shall obtain a burial-transit permit from the Local Registrar where the death certificate is or will be filed, or from the State Registrar electronically through a Vital Sta-

tistics Section electronic death registration system. The registrar shall not issue a burial-transit permit until a certificate of death, completed in so far as possible, has been presented (See §181.6 of this title (relating to Disinterment)).

(c) The funeral director, or person acting as such, shall furnish the sexton or other person in charge of a cemetery with the information required.

(d) If a county elects to expedite death certificates pursuant to Texas Health and Safety Code §193.0025, the funeral director, or person acting as such, who assumes custody of the dead body or fetus will work with the Local Registrar to ensure that a copy of the decedent's death certificate is issued to the requestor not later than 48 hours after the requestor's request if all statutory requirements are met. The department, using existing resources and programs to the extent possible, shall provide technical support.

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

Filed with the Office of the Secretary of State on November 4, 2021.

TRD-202104440

Scott A. Merchant

Interim General Counsel

Department of State Health Services

Effective date: November 24, 2021

Proposal publication date: September 10, 2021

For further information, please call: (512) 776-7646



SUBCHAPTER B. VITAL RECORDS

25 TAC §181.22, §181.30

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and efficient enforcement of Texas Health and Safety Code, Chapters 191 and 193; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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

Filed with the Office of the Secretary of State on November 4, 2021.

TRD-202104441

Scott A. Merchant

Interim General Counsel

Department of State Health Services

Effective date: November 24, 2021

Proposal publication date: September 10, 2021

For further information, please call: (512) 776-7646

◆ ◆ ◆

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 335. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE

SUBCHAPTER J. HAZARDOUS WASTE GENERATION, FACILITY AND DISPOSAL FEE SYSTEM

30 TAC §§335.323, §335.325

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §335.323, concerning Generation Fee Assessment, and §335.325, concerning Industrial Solid Waste Generation, Facility and Disposal Fee System. Amended §335.323 and §335.325 are adopted *with changes* to the proposed text as published in the June 4, 2021, issue of the *Texas Register* (46 TexReg 3499) and, therefore, will be republished.

Background and Summary of the Factual Basis for the Adopted Rules

Texas Health and Safety Code (THSC), §361.134 and §361.136 allows the commission to collect fees for industrial solid waste and hazardous waste generation and management. Industrial solid waste covers what is commonly referred to as Class 1 nonhazardous waste or nonhazardous waste. Additionally, THSC, §361.133(d) sets a collection cap up to \$16 million in waste management fees annually and THSC, §361.134(c) provides collection caps of \$10,000 and \$50,000 for nonhazardous and hazardous waste generators, respectively. Fee schedules for waste generators and waste management have not changed since 1994. The commission adopts an increase in both the generator and management fees and the ability to adjust fees annually under a specified maximum fee schedule. The increase in fees and the ability to adjust fees will allow the commission to optimize existing statutory caps to manage the Waste Management Account more adequately. The commission will utilize various communication strategies to inform the public and regulated entities of fee changes.

Section by Section Discussion

In addition to the adopted revisions associated with this rulemaking, various non-substantive changes are adopted to update references or correct grammar to be consistent throughout Chapter 335. These changes are non-substantive and are not specifically discussed in the Section by Section Discussion portion of this preamble.

Subchapter J: Hazardous Waste Generation, Facility and Disposal Fee System

§335.323, Generation Fee Assessment

The commission adopts the amendments to the tables located in §335.323(e)(1) and (2) to provide for increases to the generator fee for both hazardous and Class 1 nonhazardous waste generators. The commission adopts §335.323(e)(3) to allow the executive director to adjust the fees on an annual basis at or below the established maximum annual fee schedules in the revised

tables located in §335.323(e)(1) and (2). Since the proposal, the tables in §335.323(e)(1) and (2) are amended to include table numbers and titles. The table in §335.323(e)(2) is amended to clarify the classification of waste. The commission is making these changes to clarify the names of the fee schedules in response to comments.

In response to comments, the agency is further describing how the executive director will inform regulated entities of the fee change. For generator fees, which are paid annually on the calendar year, the executive director plans to provide communication of changes 30 days before the initial fee rate change and 90 days before any future changes to the fee rate. If adopted, the executive director would charge the new fee rate to waste generated on or after January 1, 2022, and would send communication of changes for the 2022 fee schedule by December 1, 2021. After the initial rollout, communication of yearly fee adjustments would occur no later than October 1 of the year prior to the effective date of the fee adjustments. Since the proposal, language has been added to §335.323(e)(3) stating the executive director will notify fee payers of the new fee rate before the rates go into effect. Additionally, the executive director made a non-substantive clarification by replacing "up to" with "below" to better describe that the executive director must set fee rates at or below the fee schedules in rule.

In response to comments, the executive director anticipates increasing the generation fee in four equivalent increases over a period of four years. For generator fees, the executive director will begin charging increased fees for the first adjustment on January 1, 2022, and future adjustments on each subsequent January 1. The executive director will monitor fund balances and projected revenue each fiscal year to determine if adjustments are necessary.

§335.325, Industrial Solid Waste and Hazardous Waste Management Fee Assessment

The commission adopts the amendments to the tables located in §335.325(j)(1) and (2) to provide for increases to the waste management fee for both hazardous and Class 1 nonhazardous waste management facilities. The commission adopts §335.325(j)(3) to allow the executive director to adjust the fees on an annual basis at or below the established maximum fee schedules in the revised tables located in §335.325(j)(1) and (2). Since the proposal, the tables in §335.325(j)(1) and (2) are amended to include table numbers and titles. The commission is making this change to clarify the names of the tables in response to comments.

In response to comments, the agency is further describing how the executive director will inform regulated entities of the fee change. For management fees, which are paid monthly, the executive director plans to provide communication of changes 90 days before the initial fee rate change and 90 days before any future changes to the fee rate. If adopted, the executive director would charge the new fee rate to waste managed on or after March 1, 2022, and communication of changes would be provided by December 1, 2021. After the initial rollout, the fees would be adjusted annually, on September 1 of each year, and communication of changes would be provided by June 1 of each year. Since the proposal, language has been added to §335.325(j)(3) stating the executive director will notify fee payers of the new fee rate before the rates go into effect. Additionally, the executive director made a non-substantive clarification by replacing "up to" with "below" to better describe that the executive director must set fee rates at or below the fee schedules in rule.

In response to comments, the executive director anticipates increasing the management fee in four nearly equivalent increases over a period of three and a half years. For management fees, the executive director will begin charging increased fees for the first adjustment on March 1, 2022, and on September 1, 2023, for the second adjustment, and future adjustments, if necessary, on each subsequent September 1. The executive director will monitor fund balances and projected revenue each fiscal year to determine if adjustments are necessary.

Final Regulatory Impact Determination

The commission reviewed the rulemaking adoption in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225. The commission determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the rulemaking adoption is not to protect the environment or to reduce risks to human health from environmental exposure. The intent of the rulemaking adoption is to provide additional revenue for the commission's waste fund, thus the rulemaking adoption is not a major environmental rule. Additionally, this rulemaking does not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Furthermore, even if the rulemaking adoption did meet the definition of a "major environmental rule," the adopted rules do not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

First, the rulemaking will not exceed a standard set by federal law because the commission is adopting this rulemaking within the authority given by the federal hazardous waste program.

Second, the rulemaking will not adopt requirements that are more stringent than existing state laws. The THSC authorizes the commission to collect an annual generation fee from each generator who generates Class I industrial solid waste or hazardous waste and to collect a fee on industrial solid waste and hazardous waste managed at a facility, and the rulemaking adoption seeks to adjust fees consistent with state law.

Third, the rulemaking adoption will not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, where the delegation agreement or contract is to implement a state and federal program. Rather, the commission is adopting rules necessary to maintain the budget for the authorized state hazardous waste program.

Fourth, this rulemaking adoption does not seek to adopt a rule solely under the general powers of the agency because sections of the THSC authorize this rulemaking. The Statutory Authority section of this preamble cites to the sections of the THSC that authorize this rulemaking.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the rulemaking adoption and performed analysis of whether the rulemaking adoption constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the rulemaking adoption is to provide the additional revenue necessary to operate commission waste program activities funded by the Waste Management Account in a manner that is consistent with the statutory requirements set forth in the THSC. The rulemaking adoption will substantially advance this stated purpose by increasing the fees for industrial solid waste and hazardous waste generation and management and enabling the commission to adjust fees annually in accordance with existing statutory caps.

Promulgation and enforcement of the rulemaking adoption will be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations will not affect a landowner's rights in private real property because this rulemaking will not burden (constitutionally) nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, the rulemaking adoption will not burden private real property because it will amend a fee rule relating to funding for the commission's waste program activities.

Consistency with the Coastal Management Program

The commission reviewed this rulemaking adoption for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the amendments are consistent with CMP goals and policies. The amendments are consistent with CMP goals and policies because the rulemaking is a fee rule, which is a procedural mechanism for paying for commission programs; will not have direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendments will not violate (exceed) any standards identified in the applicable CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The commission held a public hearing on June 29, 2021. The comment period closed on July 06, 2021. The commission received comments from Corteva Agriscience (CA), Day Enterprises, LLC (DE), Heritage Environmental Services, LLC (HES), Texas Molecular Holdings LLC (TM), and US Ecology (USE). One of the comments was in support of the proposed rule revisions, three of the comments were against the proposed rule revisions, one comment was neither in support of nor against the proposed rule revisions, and all of the comments suggested changes to the proposed rules or fee structures.

Response to Comments

Comment

CA disagreed with the increase to the maximum generation fee schedule that would allow an increase to the maximum fee in one year and recommended capping generation fee increases with a maximum annual percentage. HES recommended a phased approach to fee increases. USE asked if it is necessary for the commission to increase the fees to the maximum, or if a phased increase could meet the commission's needs.

Response

The Waste Management Account, Fund 0549, is facing a declining fund balance, and an increase in revenue is necessary for the commission to carry out its duties for waste management programs. After considering the comments received, the commission agrees that a phased approach is appropriate to increase fee rates, up to the maximum schedules. The executive director will utilize the flexibility in newly adopted 30 TAC §335.323(e)(3) and §335.325(j)(3) to incrementally increase the fee rates and anticipates four equivalent increases over a period of three and a half years for the management fee and four years for the generation fee. The executive director will monitor fund balances and projected revenue each fiscal year to determine if increases are necessary. The commission has made no changes in rule in response to these comments.

Comment

DE recommended that the commission increase the waste management annual fee cap under THSC, §361.133(d) and to adjust the cap and fee annually based on inflation to provide additional support to the commission's waste program activities.

Response

The Texas state legislature initiates revisions to statutory fee cap, and the commission's role is to implement rules in accordance with the legislation pursuant to the Texas Government Code, Chapter 2001. The commission has the authority to increase the fees for hazardous and Class 1 nonhazardous waste management under THSC, §361.136, but must remain within the statutory fee cap established in THSC, §361.133(d). The adopted fee increase was developed to allow the commission to meet but not exceed the statutory limit. The commission does not have the authority to adjust the statutory cap. Therefore, the commission cannot adjust the fee cap based on inflation. The commission has made no changes in response to this comment.

Comment

HES and USE commented that the proposed fee increases could reduce Texas industry competitiveness with industries in other states, and USE commented that if customers doing business in Texas utilize out of state disposal options there could be a revenue reduction.

Response

The commission considered the fee rate structures used by other states and determined that the adopted fee structure is comparable. However, as described in the above response to comment, the commission will utilize a phased incremental increase in fee rates, up to the maximum schedules, and anticipates four equivalent increases over a period of three and a half to four years. The executive director will monitor fund balances and projected revenue each fiscal year to determine if increases are necessary. Additionally, and as discussed in a response to comment be-

low, the executive director will analyze waste management and disposal trends over the previous 18 months before setting the waste management fee rate for the upcoming year. The commission has made no changes in rule in response to this comment.

Comment

HES and USE recommended that the commission initiate a new stakeholder group to further address the fee increases.

Response

The commission requested comments and guidance from the regulated community through a stakeholder meeting and 30-day comment period in July 2019 and received no substantive comments. The commission has made no changes in response to this comment.

Comment

USE recommends increasing the statutory cap for municipal solid waste (MSW) fees in lieu of the proposed industrial and hazardous waste fees increase.

Response

The Texas state legislature initiates revisions to statutory fee caps, and the commission's role is to implement rules in accordance with the legislation pursuant to the Texas Government Code, Chapter 2001. The commission has the authority to increase the fees for hazardous and Class 1 nonhazardous waste generators and management under THSC, §361.134 and §361.136 subject to statutory caps. This rule increases the fees while remaining within the statutory cap provided by THSC, §361.134(c) and §361.133(d). The commission does not have the authority to raise the MSW fees above the rates set in THSC, §361.013. Moreover, any revisions to MSW fees are beyond the scope of this rulemaking. Thus, the commission has made no changes in response to this comment.

Comment

USE recommended revisions to the proposed management fee structure to avoid exceeding the revenue caps or issuing rebates.

Response

The management fee increase was developed to meet but not exceed the statutory limit in THSC, §361.133(d). The purpose of the ability to adjust the fee in the future is to prevent overcollection caused by increased waste volumes. The executive director will analyze waste management and disposal trends over the previous 18 months before setting the fee for the upcoming year. The commission has made no changes in response to this comment.

Comment

USE and TM recommend revising the proposed regulations to include advance notification for fee revisions and the commission's plans to annually adjust the fees to allow the regulated community to plan for the adjustments. TM recommends a 60-day minimum advance notification.

Response

The commission acknowledges the impact fee adjustments may have in fee payers' budgeting processes and will communicate changes 90 days before the new fees become effective. Communications will include updates to agency forms and websites,

along with notification through GovDelivery listservs and other email communication.

For management fees, which are paid monthly, the executive director plans to provide communication of changes 90 days before the initial fee rate change and 90 days before any future changes to the fee rate. If adopted, the executive director would charge the new fee rate to waste managed on or after March 1, 2022, and communication of changes would be provided by December 1, 2021. After the initial rollout, the fees would be adjusted annually, on September 1 of each year, and communication of changes would be provided by June 1 of each year.

For generator fees, which are paid annually on the calendar year, the executive director plans to provide communication of changes 30 days before the initial fee rate change and 90 days before any future changes to the fee rate. If adopted, the executive director would charge the new fee rate to waste generated on or after January 1, 2022, and would send communication of changes for the 2022 fee schedule by December 1, 2021. After the initial rollout, communication of fee adjustments would occur no later than October 1 of the year prior to the effective date of the fee adjustments.

The commission has added language in rule that requires the executive director to notify fee payers of fee adjustments before adjusted rates go into effect.

Comment

TM commented that the increase in generator fees will likely impact disposal costs and requested clarification for the increases to the generator fees for both hazardous and Class 1 nonhazardous wastes.

Response

The commission has the authority to increase the fees for hazardous and Class 1 nonhazardous waste generators and management under THSC, §361.134 and §361.136 subject to statutory caps. Revisions to the industrial and hazardous waste generator and management fee rules are needed to increase revenue into the Waste Management Account which is facing a declining fund balance. The increased fee rates will allow the commission to increase revenue while remaining within the statutory caps and equitably collect fees for waste processing and disposal across the hazardous and municipal waste program activities. As described in above response to comments, the commission will utilize a phased incremental increase in fee rates, up to the maximum schedules, and anticipates four equivalent increases over a period of three and a half to four years. The executive director will monitor fund balances and projected revenue each fiscal year to determine if increases are necessary. The commission has made no changes in rule in response to this comment.

Comment

TM recommended rule language changes to §335.323(e)(2) regarding "Class 1 Nonhazardous Waste," and the clarification on the use of "Table," "Figure," and "Schedule" in the fee schedules.

Response

The commission has made revisions to clarify the use of "Table" in reference to the fee schedules in §335.323 and §335.325. The commission has also made a revision to §335.323(e)(2) to specify "Class 1" in "Class 1 Nonhazardous Waste."

Comment

TM commented appreciation for the consistent increase across all disposition methods.

Response

The commission acknowledges the comment. The commission has made no changes in response to this comment.

Statutory Authority

The rules are adopted under the authority of Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.024, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under THSC, Chapter 361; and THSC, §361.017, which establishes the commission's jurisdiction over all aspects of the management of industrial solid waste and municipal hazardous waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction.

The adopted rules implement THSC, §§361.133(d), 361.134, 361.134(c), and 361.136.

§335.323. Generation Fee Assessment.

(a) An annual generation fee is hereby assessed each industrial or hazardous solid waste generator that is required to notify under §335.6 of this title (relating to Notification Requirements) and which generates Class 1 industrial solid waste or hazardous waste or whose act first causes such waste to become subject to regulation under Subchapter B of this chapter (relating to Hazardous Waste Management General Provisions) on or after September 1, 1985. These fees shall be deposited in the hazardous and solid waste fee fund. The amount of a generation fee is determined by the total amount of Class 1 nonhazardous waste or hazardous waste generated during the previous calendar year. The annual generation fee may not be less than \$50. The annual generation fee for hazardous waste shall not be more than \$50,000 and for nonhazardous waste not more than \$10,000.

(b) Wastewaters are exempt from assessment under the following conditions.

(1) Wastewaters containing hazardous wastes which are designated as hazardous solely because they exhibit a hazardous characteristic as defined in 40 Code of Federal Regulations (CFR) Part 261, Subpart C, concerning characteristics of hazardous waste, and are rendered nonhazardous by neutralization or other treatment on-site in totally enclosed treatment facilities or wastewater treatment units for which no permit is required under §335.2 of this title (relating to Permit Required) or §335.41 of this title (relating to Purpose, Scope and Applicability) are exempt from the assessment of hazardous waste generation fees.

(2) Wastewaters classified as Class 1 industrial solid wastes because they meet the criteria for a Class 1 waste under the provisions of §335.505 of this title (relating to Class 1 Waste Determination) and are treated on-site in totally enclosed treatment facilities or wastewater treatment units for which no permit is required under §335.2 of this title or §335.41 of this title and no longer meet the criteria for a Class 1 waste are exempt from the assessment of waste generation fees.

(3) Wastewaters containing hazardous wastes which are designated as hazardous solely because they exhibit a hazardous characteristic as defined in 40 CFR Part 261, Subpart C, concerning characteristics of hazardous waste, and are transported via direct hard pipe connection to a publicly-owned treatment works (POTW) and

rendered nonhazardous by neutralization or other treatment are exempt from the assessment of hazardous waste generation fees.

(4) Wastewaters classified as Class 1 industrial solid wastes because they meet the criteria for a Class 1 waste under the provisions of §335.505 of this title and are transported via direct hard pipe connection to a POTW for treatment and no longer meet the criteria for a Class 1 waste are exempt from the assessment of waste generation fees.

(5) Wastewaters which are designated as hazardous waste solely under 40 CFR §261.3(a)(2)(iv) that are generated at terminal operations due to de minimis losses of commercial chemical products and chemical intermediates listed in 40 CFR §261.33 and are treated on-site or off-site at a POTW are exempt from the assessment of hazardous waste generation fees, provided that any discharge to a POTW is via a direct hardpipe connection. For the purposes of this section, de minimis losses shall have the meaning described in 40 CFR §261.3(a)(2)(iv)(D).

(6) These exemptions or adjustments in fee assessment in no way limit a generator's obligation to report such waste generation or waste management activity under any applicable provision of this chapter.

(7) A wastewater stream treated to meet a different waste classification is subject to only one assessment under this section.

(c) Wastes generated in a removal or remedial action accomplished through the expenditure of public funds from the hazardous and solid waste remediation fee fund shall be exempt from any generation fee assessed under this section.

(d) Wastes which are recycled shall be exempt from any generation fee assessed under this section.

(e) Generation fees are to be assessed up to the maximum annual fee according to the schedules in the tables in Figure: 30 TAC §335.323(e)(1) and (2) in this subsection.

(1) Table 1: Hazardous Waste Schedule.
Figure: 30 TAC §335.323(e)(1)

(2) Table 2: Class 1 Nonhazardous Waste Schedule.
Figure: 30 TAC §335.323(e)(2)

(3) The executive director may adjust fees at or below the annual fee specified in the fee schedules in this subsection, on an annual basis, and will notify fee payers of the upcoming fee rate before the rates go into effect.

(f) Any claim of exemption from or adjustment to the assessment of a generation fee under this section must be made in writing to the executive director prior to the due date of the assessment.

§335.325. Industrial Solid Waste Generation, Facility and Disposal Fee System.

(a) A fee is hereby assessed on each owner or operator of a waste storage, processing, or disposal facility, except as provided in subsections (b) - (e) of this section. A fee is assessed for hazardous wastes which are stored, processed, disposed, or otherwise managed and for Class 1 industrial wastes which are disposed at a commercial facility. For the purpose of this section, the storage, processing, or disposal of hazardous waste for which no permit is required under §335.2 of this title (relating to Permit Required) or §335.41 of this title (relating to Purpose, Scope and Applicability) is not subject to a hazardous waste management fee.

(b) A fee imposed on the owner or operator of a commercial hazardous waste storage, processing, or disposal facility for hazardous wastes which are generated in this state and received from an affiliate or wholly owned subsidiary of the commercial facility, or from a captured facility, shall be the same fee imposed on a noncommercial facility. For

the purpose of this section, an affiliate of a commercial hazardous waste facility must have a controlling interest in common with that facility.

(c) The storage, processing, or disposal of industrial solid waste or hazardous wastes generated in a removal or remedial action accomplished through the expenditure of public funds from the hazardous and solid waste remediation fee fund shall be exempt from the assessment of a waste management fee under this section.

(d) A fee shall not be imposed on the owner or operator of a waste storage, processing, or disposal facility for the storage of hazardous wastes if such wastes are stored within the time periods allowed by and in accordance with the provisions of §335.69 of this title (relating to Accumulation Time).

(e) A fee may not be imposed under this section on the operation of a facility permitted under the Texas Water Code, Chapter 26, or the federal National Pollutant Discharge Elimination System program for wastes treated, processed, or disposed of in a wastewater treatment system that discharges into surface waters of the state. For the purpose of this section, the management of a hazardous waste in a surface impoundment which is not exempt from assessment under this subsection will be assessed the fee for processing under subsection (j) of this section.

(f) The waste management fee authorized under this section shall be based on the total weight or volume of a waste except for wastes which are disposed of in an underground injection well, in which case the fee shall be based on the dry weight of the waste, measured in dry weight tons (dwt), as defined in §335.322 of this title (relating to Definitions) and §335.326 of this title (relating to Dry Weight Determination).

(g) The hazardous waste management fee for wastes generated in this state shall not exceed \$40 per ton for wastes which are landfilled.

(h) The operator of a waste storage, processing, or disposal facility receiving industrial solid waste or hazardous waste from out-of-state generators shall be assessed the fee amount required on wastes generated in state plus an additional increment to be established by rule, except as provided in subsection (k) of this section.

(i) For the purposes of subsection (j) of this section, energy recovery means the burning or incineration of a hazardous waste fuel and fuel processing means the handling of a waste fuel, including storage and blending, prior to its disposal by burning.

(j) Except as provided in subsections (k) - (q) of this section, waste management fees shall be assessed up to the maximum fee according to the schedules in the tables in Figure: 30 TAC §335.325(j)(1) and (2) in this subsection.

(1) Table 1: Hazardous Waste Schedule.
Figure: 30 TAC §335.325(j)(1)

(2) Table 2: Class 1 Nonhazardous Waste Schedule.
Figure: 30 TAC §335.325(j)(2)

(3) The executive director may adjust fees at or below the fee specified in the fee schedule, on an annual basis, and will notify fee payers of the upcoming fee rate before the rates go into effect.

(k) For wastes which are generated out-of-state, the fee will be that specified in subsection (j) of this section, except that the fee for the storage, processing, incineration, and disposal of hazardous waste fuels shall be the same for wastes generated out-of-state and in-state.

(l) Except as provided in subsection (m) of this section, only one waste management fee shall be paid for a waste managed at a facility. In any instance where more than one fee could be applied under

this section to a specific volume of waste, the higher of the applicable fees will be assessed.

(m) A fee for storage of hazardous waste shall be assessed in addition to any fee for other waste management methods at a facility. No fee shall be assessed under this section for the storage of a hazardous waste for a period of less than 90 days as determined from the date of receipt or generation of the waste (or the effective date of this section). The fee rate specified in the schedule under subsection (j) of this section shall apply to the quantity of waste in any month which has been in storage for more than 90 days or the number for which an extension has been granted under §335.69 of this title.

(n) A facility which receives waste transferred from another facility shall pay any waste management fee applicable under this section and shall not receive credit for any fee applied to the management of the waste at the facility of origin.

(o) The fee rate for incineration of aqueous wastes containing 5.0% or less of total organic carbon will be 10% of the fee for incineration under the schedule in subsection (j) of this section.

(p) A commercial waste disposal facility receiving solid waste not subject to assessment under this section shall pay any assessment due under Chapter 330, Subchapter P of this title (relating to Fees and Reporting). No fee for disposal of a solid waste under Chapter 330, Subchapter P of this title, shall be assessed in addition to a fee for disposal under this section.

(q) An operator of a hazardous waste injection well electing to separately measure inorganic salts in the determination of dry weight under the provisions of §335.326(c) of this title shall pay a fee equivalent to 20% of the fee for underground injection assessed in subsection (j) of this section for the components of the waste stream determined to be inorganic salts.

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

Filed with the Office of the Secretary of State on November 5, 2021.

TRD-202104451

Guy Henry

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: November 25, 2021

Proposal publication date: June 4, 2021

For further information, please call: (512) 239-2809



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE SUBCHAPTER E. LEAVE POOLS

31 TAC §51.142

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 26, 2021, adopted new 31 TAC §51.142, concerning Family Leave Pool, without changes to the proposed

text as published in the July 23, 2021, issue of the *Texas Register* (46 TexReg 4438). The rule will not be republished.

The most recent session of the Texas Legislature enacted House Bill (H.B.) 2063, which amended Government Code, Chapter 661 by adding new Subchapter A-1 to require each state agency to create and administer an employee family leave pool. Under the provisions of H.B. 2063, the governing body of each state agency is required to adopt rules and prescribe procedures relating to the operation of the agency family leave pool.

The new rule sets forth the purpose of the family leave pool, designates a pool administrator, and requires the pool administrator, with the advice and consent of the executive director of the agency, to develop and implement operating procedures consistent with the requirements of the rule and relevant law governing operation of the pool. The rule action also retitles Subchapter E to reflect the creation of the new type of leave pool. The new title will be Leave Pools.

The department received no comments opposing or supporting adoption of the rule as proposed.

The new rule is adopted under the authority of Government Code, §661.022, which requires the commission to adopt rules to create and administer an employee family leave pool.

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

Filed with the Office of the Secretary of State on November 2, 2021.

TRD-202104414

James Murphy

General Counsel

Texas Parks and Wildlife Department

Effective date: November 22, 2021

Proposal publication date: July 23, 2021

For further information, please call: (512) 389-4775



SUBCHAPTER K. DISCLOSURE OF CUSTOMER INFORMATION

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 26, 2021, adopted the repeal of 31 TAC §§51.300, 51.302, and 51.304 - 51.306 and an amendment to §51.303, concerning Disclosure of Information, without changes to the proposed text as published in the July 23, 2021, issue of the *Texas Register* (46 TexReg 4439). The rules will not be republished.

Senate Bill 15, enacted by the most recent session of the Texas Legislature, amended the Parks and Wildlife Code, §11.030 to proscribe the use and release of customer personal information except as authorized by Parks and Wildlife, §11.030, which makes the department rules regarding customer information either redundant or no longer statutorily permissible. However, Parks and Wildlife Code, §11.030, continues to require the department to adopt a policy regarding the use and release of customer information by rule. Therefore, the current rules are being repealed and replaced with a single provision stating that the department's policy regarding the release of personal customer information is to comply with the statutory provisions of Parks

and Wildlife Code, §11.030, and any other applicable law. The amendment also changes the title of the section to more accurately reflect the subject matter addressed by the rule.

The department received two comments opposing adoption of the proposed rules.

One commenter opposed adoption and stated that a customer's information should not be released by the "the Texas Parks system." The department agrees with the comment and responds that the purpose of the rule is to comply with legislative direction to limit disclosure of customer information except for limited purposes listed in the statute. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should legally proscribe the release of customer information and that the rule as proposed seems designed to allow the release of customer information. The department disagrees with the comment and responds that the rule as adopted explicitly states the department's intention to comply with a statute that prohibits the release of customer information except for limited purposes listed in the statute. No changes were made as a result of the comment.

The department received no comments supporting adoption of the rules as proposed.

31 TAC §§51.300, 51.302, 51.304 - 51.306

The repeals are adopted under Parks and Wildlife Code, §11.030, which requires the commission to adopt policies relating to the release and use of customer information by rule.

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

Filed with the Office of the Secretary of State on November 2, 2021.

TRD-202104410

James Murphy

General Counsel

Texas Parks and Wildlife Department

Effective date: November 22, 2021

Proposal publication date: July 23, 2021

For further information, please call: (512) 389-4775



31 TAC §51.303

The amendment is adopted under Parks and Wildlife Code, §11.030, which requires the commission to adopt policies relating to the release and use of customer information by rule.

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

Filed with the Office of the Secretary of State on November 2, 2021.

TRD-202104411

James Murphy

General Counsel

Texas Parks and Wildlife Department

Effective date: November 22, 2021

Proposal publication date: July 23, 2021

For further information, please call: (512) 389-4775



CHAPTER 55. LAW ENFORCEMENT

SUBCHAPTER J. CONTROLLED EXOTIC SNAKES

31 TAC §55.651

The Texas Parks and Wildlife Commission in a duly notice meeting on August 26, 2021, adopted an amendment to 31 TAC §55.651, concerning Controlled Exotic Snakes, without change to the proposed text as published in the July 23, 2021, issue of the *Texas Register* (46 TexReg 4440). The rule will not be republished.

The most recent session of the Texas Legislature enacted House Bill 2326, which amended Parks and Wildlife Code, Chapter 43, Subchapter V, by adding the Burmese python (*Python bivittatus*) to the statutory list of nonindigenous snakes the possession and sale of which require a permit issued by the department. The amendment adds that organism to the effectiveness of department rules in Chapter 55, Subchapter J, governing controlled exotic snakes.

The department received two comments opposing adoption of the rule as proposed.

One commenter opposed adoption and stated that possession of poisonous snakes should be illegal. The department disagrees with the comment to the extent that the commission has no statutory authority to prohibit the possession of exotic poisonous snakes. No changes were made as a result of the comment.

One commenter opposed adoption and stated the rule should be simplified by defining "controlled exotic snake" as "any snake not native to Texas" and then listing all native snakes. The commenter also stated that there should be a clarification that all non-native snakes are excluded from the definition of game animal, allowing them to be killed. The department disagrees with the comment and responds that the term "controlled exotic snake" is defined by statute and the commission cannot eliminate or modify that definition. The department also responds that the term "game animal" is also defined by statute and similarly cannot be eliminated or modified by the commission, but in any event the term does not include non-native snakes, which under the provisions of Parks and Wildlife Code, Chapters 42 and 67 and department rules can be killed at any time by any person in possession of a hunting license.

The amendment is adopted under the authority of Parks and Wildlife Code, §43.855, which requires the commission to adopt rules to implement Parks and Wildlife Code, Chapter 43, Subchapter V, including rules to govern the possession or transport of a snake covered by the subchapter and other matters the commission considers necessary.

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

Filed with the Office of the Secretary of State on November 2, 2021.

TRD-202104409

James Murphy

General Counsel

Texas Parks and Wildlife Department

Effective date: November 22, 2021

Proposal publication date: July 23, 2021

For further information, please call: (512) 389-4775



CHAPTER 57. FISHERIES

SUBCHAPTER A. HARMFUL OR POTENTIALLY HARMFUL FISH, SHELLFISH, AND AQUATIC PLANTS

31 TAC §§57.122, 57.125, 57.126

The Texas Parks and Wildlife Commission, in a duly noticed meeting on August 26, 2021, adopted amendments to 31 TAC §§57.122, 57.125 and 57.126, concerning Harmful or Potentially Harmful Fish, Shellfish and Aquatic Plants. Amended §57.122 is adopted with changes to the proposed text as published in the July 23, 2021, issue of the *Texas Register* (46 TexReg 4441) and will be republished. Amended §57.125 and §57.126 are adopted without changes to the text as proposed and published in the July 23, 2021, issue of the *Texas Register* and will not be republished.

The amendments comport agency rules with the actions of the 87th Texas Legislature, which enacted Senate Bill 703, amending the Agriculture Code to eliminate the aquaculture license currently issued by the Texas Department of Agriculture.

The amendment to §57.122, concerning Permit Application, Issuance, and Period of Validity, eliminates references to licenses issued by the Texas Department of Agriculture and requires applicants for limited special purpose permits for private pond stocking to demonstrate possession of a retail or wholesale fish dealer license issued under Parks and Wildlife Code, Chapter 47. The department has determined that persons purchasing fish for stocking ponds without holding the fish in a facility for more than 72 hours are not aquaculturists, and thus are not exempt from the licensing requirements of Parks and Wildlife Code, Chapter 47, which requires a retail or wholesale fish dealer's license to be obtained by any person who operates a place of business or vehicle for selling or offering for sale aquatic products.

The amendment to §57.125, concerning Reporting, Record-keeping, and Notification Requirements, eliminates the requirement to include the number of the aquaculture licenses issued by the Texas Department of Agriculture on notifications provided to the department by commercial aquaculturists prior to any instance of the import or export of triploid grass carp.

The amendment to §57.126, concerning Discontinuation of Permitted Activities; Sale or Transfer of Permitted Facility, eliminates references to revocation or suspension of an aquaculture license issued by the Texas Department of Agriculture as a basis for the department to cease possession, importation, exportation, sale, purchase, transportation, propagation, or culture of controlled exotic species, and would eliminate the requirement for

a transitional operation following a change in aquaculture facility ownership to submit an aquaculture license issued by the Texas Department of Agriculture.

The department received five comments opposing adoption of the rules as proposed. One commenter specifically stated that the elimination of the aquaculture license will result in an increased cost of compliance for some persons who purchase and re-sell controlled exotic species because those persons must now demonstrate to the department that they have obtained a fish dealer license from the department for each vehicle, as opposed to a single Texas Department of Agriculture Fish Farm Vehicle License, to obtain a permit for that purpose. The department agrees with the comment and responds that the department has determined that these individuals and their activities do not meet the definitions of "aquaculturist" nor "aquaculture" under Texas Agriculture Code, Chapter 134, and, under the provisions of S.B. 703, the legislature made no provision for exempting any person other than a commercial aquaculturist from the applicability license requirements of Parks and Wildlife Code, Chapter 47; thus, any increase in the cost of compliance is a result of legislative action and not the rules as proposed. No changes were made as a result of the comment.

The department received five comments supporting adoption of the rules as proposed.

The amendments are adopted under the authority of Parks and Wildlife Code, §66.007, which authorizes the department to make rules necessary to authorize the import, possession, sale, or introduction of harmful or potentially harmful exotic fish.

§57.122. *Permit Application, Issuance, and Period of Validity.*

(a) Interstate transit permits. Interstate transit permit application, issuance, and period of validity are described in §57.121 of this title (relating to Transport of Live Controlled Exotic Species).

(b) Permit application.

(1) Submission deadline. An initial application for any permit under this subchapter shall be submitted at least 30 days prior to any prospective activity involving controlled exotic species.

(2) General requirements. An applicant for any permit under this subchapter shall submit:

(A) Application--a completed and signed application for the appropriate permit on a form supplied by the department;

(B) Applicant information--Texas driver's license or identification number, Social Security number, and date of birth for the applicant and each manager or other person who is to supervise permitted activities;

(C) Additional required documentation--as described in subsection (3) of this section or otherwise specified by this subchapter; and

(D) Fees--the appropriate fee specified in §53.15 of this title (relating to Miscellaneous Fisheries and Wildlife Licenses and Permits), except that fees shall be waived for:

(i) public school educational programs meeting the conditions in Parks and Wildlife Code, §66.007(c-1) provided that the applicant submits a written request for a fee waiver, including course descriptions or curriculum demonstrating controlled exotic species will be part of an educational program that includes tilapia aquaculture and hydroponics.

(ii) physical removal of controlled exotic species of plants from public water in accordance with an approved treatment proposal in accordance with §57.932 of this title (relating to State Aquatic Vegetation Plan).

(iii) stocking triploid grass carp in public water.

(3) Additional documentation requirements.

(A) Required licenses. Applicants for limited special purpose permits for private pond stocking shall submit a copy of a retail or wholesale dealer's license, as applicable, in accordance with Parks and Wildlife Code, Chapter 47.

(B) Wastewater discharge authorization. Applicants for commercial aquaculture facility permits shall submit documentation required by §57.120 of this title (relating to Facility Wastewater Discharge Requirements).

(C) Nuisance Aquatic Vegetation treatment proposal. Applicants for a permit to possess, transport, and dispose controlled exotic species of plants shall also submit a treatment proposal on a department form in accordance with §57.932 of this title that includes maps showing the location where plant removal and/or disposal is to occur and routes from the removal location to the location for disposal of controlled exotic species of plants.

(D) Facility map. Applicants for commercial aquaculture facility permits, biological control production permits, zoological display or research permits with outdoor holding facilities, or limited special purpose permits for wastewater treatment shall submit an accurate map or aerial photograph of the facility location with the initial application. For facilities located within the 100-year flood plain, a professionally surveyed map may be required by the department. Maps shall be clearly labeled to indicate, at a minimum, the location of:

(i) any facility ponds, greenhouses, recirculating aquaculture systems or other infrastructure used to possess, propagate, culture, or transport controlled exotic species;

(ii) all drainage routes and structures, including adjacent ditches or natural drainage features;

(iii) all points at which water, wastewater, or waste is capable of being discharged or else noting that the facility does not discharge; and

(iv) all screens, barriers, or other structures that are intended or serve to prevent escape, release, discharge, or unauthorized removal of controlled exotic species.

(E) Emergency plan. Applicants for commercial aquaculture facility permits, water spinach culture facility permits, research permits (when live controlled exotic species are possessed), zoological display permits, and biological control production permits shall submit a written emergency plan, on the appropriate department form, demonstrating that the applicant has identified measures sufficient to prevent escape, release, or discharge of controlled exotic species into public water during a natural event such as a hurricane or flood. Approved emergency plan shall be posted and maintained on file at the facility.

(F) Research proposal and researcher qualifications. An applicant for a permit to conduct scientific research involving controlled exotic species shall also submit a research proposal and documentation of applicant qualifications to conduct controlled exotic species research.

(G) Biological control production plan. An applicant for a permit to culture controlled exotic species of plants as hosts for the purposes of production of biological control agents shall also submit a written production plan statement to include, at a minimum:

(i) the proposed number of biological control agents, if any, to be collected from public waters each year;

(ii) the expected production of the controlled exotic species of plants in acres or square feet; and

(iii) the intended use of the biological control agents including water bodies where the biological control agents may be introduced.

(c) Permit issuance. The department will not issue a permit under this subchapter for any purpose until:

(1) the application and additional documentation required by this section are determined to be adequate and complete;

(2) fees have been submitted, if applicable;

(3) facility has been inspected and approved in accordance with the requirements of §57.119 of this title (relating to Minimum Facility Requirements), if applicable; and

(4) the department has determined that the prospective activity is consistent with the department's management policies and goals and will not detrimentally affect threatened or endangered species or their habitat or affect existing biological ecosystems.

(d) Period of validity. Unless otherwise provided in this subchapter, a controlled exotic species permit issued under this subchapter is valid from the date of issuance until December 31 of the year of issuance, except that a permit to physically remove controlled exotic plants from public water in accordance with an approved vegetation treatment proposal shall have the same period of validity as the vegetation treatment proposal, as specified in the guidance document required by §57.932 of this title.

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

Filed with the Office of the Secretary of State on November 2, 2021.

TRD-202104416

James Murphy

General Counsel

Texas Parks and Wildlife Department

Effective date: November 22, 2021

Proposal publication date: July 23, 2021

For further information, please call: (512) 389-4775



SUBCHAPTER F. COLLECTION OF BROODSTOCK FROM TEXAS WATERS

31 TAC §57.395, §57.398

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 26, 2021, adopted amendments to 31 TAC §57.395, concerning Broodstock Permits; Fees, Terms of Issuance and §57.398, concerning Permit Denial, without changes to the proposed text as published in the July 23, 2021, issue of the *Texas Register* (46 TexReg 4443). The rules will not be republished.

The amendments eliminate a provision requiring an applicant for a broodstock permit to provide a copy of an aquaculture license as part of the application process and deletes a reference to that license. The amendments function collectively to com-

port agency rules with the actions of the 87th Texas Legislature, which enacted Senate Bill 703, amending the Agriculture Code to eliminate the aquaculture license issued by the Texas Department of Agriculture.

The department received four comments opposing adoption of the rules as proposed. One commenter provided a specific comment stating that there is no legal, logical, nor [sic] factual basis on which the proposal could be justified. The commenter also stated there is no logical or factual basis for anyone to need to apply for a broodstock collection permit unless they also own and operate, or are currently employed by, an aquaculture facility operating under a validly-issued and current aquaculture facility license. The department disagrees with the comments and responds, first, that because the legislature eliminated the aquaculture license, there is no longer any reason for the department's rules to reference that license; thus, the rule as adopted is logical. The department also notes that broodstock collection permits for fish, to which the commenter seemed to be specifically referring, are only issued to operators of commercial aquaculture facilities, in accordance with Parks and Wildlife Code, §43.551. Finally, the department responds that the legal basis for the adoption is Parks and Wildlife Code, §43.552, which not only authorizes but, in fact, requires the commission to prescribe by rule the requirements and conditions for the issuance of a broodstock permit. No changes were made as a result of the comment.

The department received four comments supporting adoption of the rules as proposed.

The amendments are adopted under the authority of Parks and Wildlife Code, §43.552, which requires the commission to prescribe by rule the requirements and conditions for the issuance of a permit under Parks and Wildlife Code, Chapter 43, Subchapter P.

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

Filed with the Office of the Secretary of State on November 2, 2021.

TRD-202104412

James Murphy

General Counsel

Texas Parks and Wildlife Department

Effective date: November 22, 2021

Proposal publication date: July 23, 2021

For further information, please call: (512) 389-4775



CHAPTER 69. RESOURCE PROTECTION

SUBCHAPTER D. MEMORANDUM OF UNDERSTANDING

31 TAC §69.71

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 26, 2021, adopted an amendment to 31 TAC §69.71, concerning Memorandum of Understanding between the Texas Parks and Wildlife Department and the Texas Department of Transportation, without changes to the proposed text as

published in the July 23, 2021, issue of the *Texas Register* (46 TexReg 4447). The rule will not be republished.

The amendment adopts by reference a Memorandum of Understanding (MOU) between the Texas Parks and Wildlife Department (TPWD) and the Texas Department of Transportation (TxDOT) concerning transportation projects and highway improvement projects ("TxDOT construction projects" or "projects").

Transportation Code, §201.607, requires TxDOT to adopt an MOU with each state agency that has responsibility for the protection of the natural environment, which includes TPWD. Among other things, the MOU must address "the responsibilities of each agency entering into the memorandum relating to the review of the potential environmental . . . effect of a highway project." Transportation Code, §201.607, also requires TxDOT to adopt the memoranda and all revisions by rule and to examine and revise the memoranda every five years. In addition, §201.607 requires each agency that is a party to the MOU to adopt revisions to the MOU by rule.

Under Parks and Wildlife Code, §12.0011, TPWD is the state agency with primary responsibility for protecting the state's fish and wildlife resources. This section also requires TPWD to provide "recommendations that will protect fish and wildlife resources to local, state, and federal agencies that approve, permit, license, or construct developmental projects" and to provide "information on fish and wildlife resources to any local, state, and federal agencies or private organizations that make decisions affecting those resources."

The MOU is intended to implement the statutory obligations of both TxDOT and TPWD regarding review of projects covered by the MOU for impacts to natural resources.

The current MOU between TPWD and TxDOT (43 TAC §§2.201 - 2.214) provides for TPWD review of TxDOT projects that have the potential to affect natural resources within the jurisdiction of TPWD. In accordance with Transportation Code, §201.607, TPWD and TxDOT have examined the current MOU and developed a new MOU. The proposed new MOU was published by TxDOT in the April 9, 2021, issue of the *Texas Register* (46 TexReg 2413). The new MOU has been adopted by TxDOT and the notice of adoption was published in the July 16, 2021, issue of the *Texas Register* (46 TexReg 4375).

The department received no comments opposing adoption of the rule as proposed. The department received two comments supporting adoption of the rule as proposed.

The rule is adopted under the authority of Transportation Code, §201.607, which requires the department to adopt by rule a memorandum of understanding with the Texas Department of Transportation and each state agency that is responsible for the protection of the natural environment or for the preservation of historical or archeological resources.

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

Filed with the Office of the Secretary of State on November 2, 2021.

TRD-202104415

James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: November 22, 2021
Proposal publication date: July 23, 2021
For further information, please call: (512) 389-4775



PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 370. COLONIA PLUMBING LOAN PROGRAM

The Texas Water Development Board (TWDB) adopts the repeal of Chapter 370, Subchapter A, §370.1 and §370.2, Subchapter B, §§370.21 - 370.35, Subchapter C, §370.41 and §370.42, and Subchapter D, §§370.51 - 370.53, relating to the Colonia Plumbing Loan Program (CPLP). The repeal of this chapter is adopted without changes as published in the August 6, 2021, issue of the *Texas Register* (46 TexReg 4830). The repealed rules will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT.

This chapter is repealed because the agreement between the TWDB and the U.S. Environmental Protection Agency (EPA) expired and the funds in the CPLP account were formally transferred to the Clean Water State Revolving Fund program with the permission of the EPA and the Office of the Governor. The TWDB has determined that, while the CPLP is still in statute (Tex. Water Code §§15.731-.737, with no federal funding for the CPLP, there is no need for rules.

REGULATORY IMPACT ANALYSIS DETERMINATION

The Board has determined that the rule repeal is not subject to Government Code §2001.0225 because it is not a major environmental rule under that section.

TAKINGS IMPACT ASSESSMENT

The Board has determined that the promulgation and enforcement of this rule repeal will constitute neither a statutory nor a constitutional taking of private real property. The repeal does not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because the rule repeal does not burden, restrict, or limit the owner's right to use of property. Therefore, the rule repeal does not constitute a taking under Texas Government Code, Chapter 2007 or the Texas Constitution.

PUBLIC COMMENTS

The public comment period ended September 7, 2021. No comments were received, and no changes were made.

SUBCHAPTER A. INTRODUCTORY PROVISIONS

31 TAC §370.1, §370.2

STATUTORY AUTHORITY

The repeal is adopted under the authority of Tex. Water Code §6.101, which provides the TWDB with the authority to adopt, amend, or repeal rules necessary to carry out the powers and

duties in the Water Code and other laws of the State and Tex. Water Code §15.737, which provides the TWDB with the authority to adopt rules necessary to carry out the CPLP.

This rulemaking affects Water Code, Chapter 15, Subchapter L

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

Filed with the Office of the Secretary of State on November 4, 2021.

TRD-202104442
Ashley Harden
General Counsel
Texas Water Development Board
Effective date: November 24, 2021
Proposal publication date: August 6, 2021
For further information, please call: (512) 463-7686



SUBCHAPTER B. POLICY DECLARATIONS

31 TAC §§370.21 - 370.35

STATUTORY AUTHORITY

The repeal is adopted under the authority of Tex. Water Code §6.101, which provides the TWDB with the authority to adopt, amend, or repeal rules necessary to carry out the powers and duties in the Water Code and other laws of the State and Tex. Water Code §15.737, which provides the TWDB with the authority to adopt rules necessary to carry out the CPLP.

This rulemaking affects Water Code, Chapter 15, Subchapter L

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

Filed with the Office of the Secretary of State on November 4, 2021.

TRD-202104443
Ashley Harden
General Counsel
Texas Water Development Board
Effective date: November 24, 2021
Proposal publication date: August 6, 2021
For further information, please call: (512) 463-7686



SUBCHAPTER C. APPLICATIONS TO THE BOARD

31 TAC §370.41, §370.42

STATUTORY AUTHORITY

The repeal is adopted under the authority of Tex. Water Code §6.101, which provides the TWDB with the authority to adopt, amend, or repeal rules necessary to carry out the powers and duties in the Water Code and other laws of the State and Tex. Water Code §15.737, which provides the TWDB with the authority to adopt rules necessary to carry out the CPLP.

This rulemaking affects Water Code, Chapter 15, Subchapter L. The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 4, 2021.

TRD-202104444
Ashley Harden
General Counsel
Texas Water Development Board
Effective date: November 24, 2021
Proposal publication date: August 6, 2021
For further information, please call: (512) 463-7686



SUBCHAPTER D. FORMAL ACTION BY THE BOARD

31 TAC §§370.51 - 370.53

STATUTORY AUTHORITY

The repeal is adopted under the authority of Tex. Water Code §6.101, which provides the TWDB with the authority to adopt, amend, or repeal rules necessary to carry out the powers and duties in the Water Code and other laws of the State and Tex. Water Code §15.737, which provides the TWDB with the authority to adopt rules necessary to carry out the CPLP.

This rulemaking affects Water Code, Chapter 15, Subchapter L.

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

Filed with the Office of the Secretary of State on November 4, 2021.

TRD-202104445
Ashley Harden
General Counsel
Texas Water Development Board
Effective date: November 24, 2021
Proposal publication date: August 6, 2021
For further information, please call: (512) 463-7686



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 421. STANDARDS FOR CERTIFICATION

37 TAC §421.1

The Texas Commission on Fire Protection (commission) adopts amendments to 37 Texas Administrative Code Chapter 421, Standards For Certification, concerning §421.1, Procedures for

Meetings. The amended section is adopted without changes to the text as published in the August 13, 2021, issue of the *Texas Register* (46 TexReg 4998). The rule will not be republished.

The amended section to rule §421.1 is adopted to provide information regarding appointment of advisory committees and ad-hoc committees by the commission and procedures for meetings.

No comments were received from the public regarding the adoption of the amendments.

The amended section is adopted under Texas Government Code, §419.008(f), which authorizes the commission to appoint advisory committees to assist it in the performance of its duties.

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

Filed with the Office of the Secretary of State on November 5, 2021.

TRD-202104448
Michael Wisko
Agency Chief
Texas Commission on Fire Protection
Effective date: November 25, 2021
Proposal publication date: August 13, 2021
For further information, please call: (512) 936-3812



CHAPTER 441. CONTINUING EDUCATION

37 TAC §441.5

The Texas Commission on Fire Protection (commission) adopts amendments to 37 Texas Administrative Code Chapter 441, Continuing Education, concerning §441.5 Requirements.

The amended section is adopted without changes to the text as published in the August 13, 2021, issue of the *Texas Register* (46 TexReg 5000). The section will not be republished.

The amended section to rule §441.5 is adopted to add a requirement for certificate holders to review the most recent copy of the injury report as part of the continuing education requirements for renewal of fire protection personnel certifications.

The intent of this requirement is to draw attention to the top injuries to fire protection personnel contained in the report to prevent future injuries.

No comments were received from the public regarding the adoption of the amendments.

The amended section is adopted under Texas Government Code, §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also adopted under Texas Government Code §419.034, which authorizes the commission to adopt rules establishing the requirements for certification renewal.

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

Filed with the Office of the Secretary of State on November 5, 2021.

TRD-202104449
Michael Wisko
Agency Chief
Texas Commission on Fire Protection
Effective date: November 25, 2021
Proposal publication date: August 13, 2021
For further information, please call: (512) 936-3812



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 79. LEGAL SERVICES

SUBCHAPTER S. CONTRACTING ETHICS

40 TAC §§79.1801 - 79.1806

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055 requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1. Therefore, the Executive Commissioner of HHSC adopts the repeal of Subchapter S, concerning Contracting Ethics, which is comprised of §§79.1801 - 79.1806, in Title 40, Part 1, Chapter 79.

The repeal of Chapter 79, Subchapter S is adopted without changes to the proposed text as published in the August 20, 2021, issue of the *Texas Register* (46 TexReg 5165). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The repeal is necessary to remove obsolete rules in Chapter 79, Subchapter S, concerning Contracting Ethics, which were last updated in 1999, and do not reflect subsequent agency changes and consolidation, or statutory changes made to Texas

Government Code Chapter 572, Personal Financial Disclosure, Standards of Conduct, and Conflict of Interest, and other ethics statutes. Ethical standards addressed by the subchapter proposed for repeal will continue to be addressed, including for contracts for goods and services for which DADS previously contracted, through:

- HHSC rules in Title 1, Part 15, Chapter 391, Subchapter D, Standards of Conduct for Vendors and HHSC Procurement and Contracting Personnel;
- self-implementation of longer standing and more recent statutory ethics provisions, particularly in Texas Government Code Chapter 572;
- the Health and Human Services Ethics Policy; and
- incorporation of applicable standards of conduct and restrictions into HHSC contracts.

COMMENTS

The 31-day comment period ended September 20, 2021.

During this period, HHSC did not receive any comments regarding the proposed repeals.

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation of, and provision of services by, the health and human services agencies, including for contracting, purchasing, and related policies, subject to other state agency contracting and purchasing laws.

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

Filed with the Office of the Secretary of State on November 2, 2021.

TRD-202104407

Karen Ray
Chief Counsel

Department of Aging and Disability Services

Effective date: November 22, 2021

Proposal publication date: August 20, 2021

For further information, please call: (512) 221-9021

