

PROPOSED RULES

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

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

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

16 TAC §§26.403 - 26.405

The Public Utility Commission of Texas (commission) proposes amendments to §26.403, relating to the Texas High Cost Universal Service Plan (THCUSP); §26.404, relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan; and §26.405, relating to Financial Need for Continued Support. The proposed amendments will clarify the identification of eligible residential and business lines and will clarify the criteria that define a service location or address. Project Number 42600 is assigned to this proceeding.

Ms. Liz Kayser, Section Director, Competitive Markets Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Kayser has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be to improve the administration of the Texas Universal Service Fund by clarifying the identification of eligible residential and business lines and clarifying the criteria that define a service location or address. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Ms. Kayser has also determined that for each year of the first five years the proposed sections are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rule-making, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's

offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 14 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 24 days after publication. Comments should be organized in a manner consistent with the organization of the proposed amendments. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt the sections. All comments should refer to Project Number 42600.

The commission proposes these amendments under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 & Supp. 2015) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §56.021 which requires the commission to adopt and enforce rules to establish the Texas Universal Service Fund to assist telecommunications providers in providing basic local telecommunications service at reasonable rates in high cost rural areas.

Cross Reference to Statutes: PURA §14.002 and §56.021.

§26.403. *Texas High Cost Universal Service Plan (THCUSP).*

(a) (No change.)

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

(1) Business line--The telecommunications facilities providing the communications channel that serves a single-line business customer's service address. For the purpose of this definition, a single-line business line is one to which multi-line hunting, trunking, or other special capabilities do not apply. For a line served by an ILEC, a business line is a line served pursuant to the ILEC's business service tariff or a package that includes such a tariffed service. For a line served by an ETP other than an ILEC, to qualify as a business line, the service must be provided pursuant to a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device.

(2) Eligible line--A residential line or a single-line business line over which an ETP provides the service supported by the THCUSP through its own facilities, purchase of unbundled network elements

(UNEs), or a combination of its own facilities and purchase of UNEs. An eligible line may be a business line or a residential line but shall not be both.

(3) (No change.)

(4) Residential line--The telecommunications facilities providing the communications channel that serves a residential customer's service address. For the purpose of this definition, a residential line is one to which multi-line hunting, trunking, or other special capabilities do not apply. A line that qualifies as a business line shall not qualify as a residential line.

(5) Service Address--For the purposes of this section, a business or residential customer's service address is the unique physical street address, including any suite or unit number, where a line is served to a customer; if no unique physical street address is available, then a physical 911 address may be used; if no unique physical street address or physical 911 address is available, then the business or residential customer's billing address shall be used. GPS coordinates shall not be used as a part or in lieu of a unique physical street address, physical 911 address, or customer billing address. For the purposes of this definition, a physical 911 address is an address transmitted to the emergency service providers by an ETP with respect to a line that is not stated in GPS coordinates.

(c) - (f) (No change.)

(g) Reporting requirements. An ETP that receives support pursuant to this section shall report the following information:

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

(4) Other reporting requirements. An ETP shall report any other information that is required by the commission or [ef] the TUSF administrator, including any [and] information necessary to assess contributions and disbursements from the TUSF.

§26.404. *Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan.*

(a) (No change.)

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

(1) Business line--The telecommunications facilities providing the communications channel that serves a single-line business customer's service address. For the purpose of this definition, a single-line business line is one to which multi-line hunting, trunking, or other special capabilities do not apply. For a line served by an ILEC, a business line is a line served pursuant to the ILEC's business service tariff or a package that includes such a tariffed service. For a line served by an ETP other than an ILEC, to qualify as a business line, the service must be provided pursuant to a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device.

(2) [(4)] Eligible line--A residential line or a single-line business line over which an ETP provides the service supported by the Small and Rural ILEC Universal Service Plan (SRILEC USP) through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs. An eligible line may be a business line or a residential line but shall not be both.

(3) [(2)] Eligible telecommunications provider (ETP)--A telecommunications provider designated by the commission pursuant to §26.417 of this title (relating to Designation as Eligible Telecom-

munications Providers to Receive Texas Universal Service Funds (TUSF)).

(4) Residential line--The telecommunications facilities providing the communications channel that serves a residential customer's service address. For the purpose of this definition, a residential line is one to which multi-line hunting, trunking, or other special capabilities do not apply. A line that qualifies as a business line shall not qualify as a residential line.

(5) Service Address--For the purposes of this section, a business or residential customer's service address is the unique physical street address, including any suite or unit number, where a line is served to a customer; if no unique physical street address is available, then a physical 911 address may be used; if no unique physical street address or physical 911 address is available, then the business or residential customer's billing address shall be used. GPS coordinates shall not be used as a part or in lieu of a unique physical street address, physical 911 address, or customer billing address. For the purposes of this definition, a physical 911 address is an address transmitted to the emergency service providers by an ETP with respect to a line and that is not stated in GPS coordinates.

(6) [(3)] Small incumbent local exchange company--An incumbent local exchange (ILEC) that qualifies as a "small local exchange company" as defined in the Public Utility Regulatory Act (PURA), §53.304(a)(1).

(c) (No change.)

(d) Service to be supported by the Small and Rural ILEC Universal Service Plan. The Small and Rural ILEC Universal Service Plan shall support the provision by ETPs of basic local telecommunications service as defined in §26.403(d) of this title (relating to Texas High Cost Universal Service Plan (THCUSP)) and is limited to those services carried on all residential lines and the first five single-line business lines at a business customer's service address for which a flat rate plan is an available option.

(e) - (g) (No change.)

(h) Reporting requirements. An ETP eligible to receive support under this section shall report information as required by the commission and the TUSF administrator.

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

(4) Other reporting requirements. An ETP shall report any other information that is required by the commission or the TUSF administrator, including and information necessary to assess contributions any [and] and disbursements from the TUSF.

§26.405. *Financial Need for Continued Support.*

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

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

(1) Business line--The telecommunications facilities providing the communications channel that serves a single-line business customer's service address. For the purpose of this definition, a single-line business line is one to which multi-line hunting, trunking, or other special capabilities do not apply. For a line served by an ILEC, a business line is a line served pursuant to the ILEC's business service tariff or a package that includes such a tariffed service. For a line served by an ETP other than an ILEC, to qualify as a business line, the service must be provided pursuant to a customer application, subscriber agreement, or contract entered into by a public or private organization of any

character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device.

(2) Eligible line--A residential line or a single-line business line over which an ETP provides the service supported by the THCUSP or SRILEC USP through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs. An eligible line may be a business line or a residential line but shall not be both.

(3) (No change.)

(4) Residential line--The telecommunications facilities providing the communications channel that serves a residential customer's service address. For the purpose of this definition, a residential line is one to which multi-line hunting, trunking, or other special capabilities do not apply. A line that qualifies as a business line shall not qualify as a residential line.

(5) Service Address--For the purposes of this section, a business or residential customer's service address is the unique physical street address, including any suite or unit number, where a line is served to a customer; if no unique physical street address is available, then a physical 911 address may be used; if no unique physical street address or physical 911 address is available, then the business or residential customer's billing address shall be used. GPS coordinates shall not be used as a part or in lieu of a unique physical street address, physical 911 address, or customer billing address. For the purposes of this definition, a physical 911 address is an address transmitted to the emergency service providers by an ETP with respect to a line that is not stated in GPS coordinates.

(d) - (i) (No change.)

(j) Service to be supported. The services to be supported pursuant to the section are subject to the same definitions and limitations as those set out in §26.403(d) and §26.404(d) of this title, in addition to any limitation ordered by the commission in a contested case proceeding.

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

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Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

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For further information, please call: (512) 936-7223



CHAPTER 27. RULES FOR ADMINISTRATIVE SERVICES

SUBCHAPTER E. ENHANCED CONTRACT MONITORING

16 TAC §27.170

The Public Utility Commission of Texas (commission) proposes new Subchapter E, Enhanced Contract Monitoring, §27.170, relating to Enhanced Contract Monitoring Procedure. The proposed new section will establish a procedure identifying contracts that require enhanced contract monitoring pursuant to Texas Government Code §2261.253, which was added by

Senate Bill 20 (84th Leg). Project Number 45273 is assigned to this proceeding.

Mr. Jay Stone, Program Administrator, Budget & Fiscal Oversight Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Jay Stone has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the higher level of monitoring associated with commission contracts that have a risk level of medium or high. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section.

Mr. Jay Stone has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rule-making, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed new section may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 14 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 45273.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2015), which provides the Public Utility Commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statute: Public Utility Regulatory Act §14.002.

§27.170. Enhanced Contract Monitoring Procedure.

(a) The commission shall assess each contract to determine whether enhanced contract monitoring is necessary.

(1) The commission shall use the following factors to determine whether enhanced contract monitoring is necessary:

(A) the complexity of the services,

(B) the contract amount,

(C) whether the services or contractor are new or changed significantly,

(D) whether the project involved is a high profile project, and

(E) any other factors that may impact the project.

(2) Projects deemed medium or high risk shall be co-monitored by contract and program staff and may involve additional team members such as legal, fiscal, and auditing staff members.

(b) If a contract is determined to need enhanced monitoring, the commission will require the vendor to provide specific programmatic information on a scheduled basis to determine if performance measures are being met.

(1) Programmatic reports shall include information related to the performance measures in the contract, as well as any other deliverables.

(2) Enhanced monitoring may also include site visits, additional meetings with the vendor's staff and other documentation determined to assess progress by the agency towards meeting performance requirements.

(c) The director of fiscal division shall notify agency executive staff of contracts needing enhanced monitoring through this process.

(d) This process does not apply to interagency agreement, interlocal agreement, a memorandum of understanding with another state agency, or a contract for which there is not a cost.

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

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Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

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For further information, please call: (512) 936-7223



PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 35. ENFORCEMENT

SUBCHAPTER A. TRANSPORTATION OF LIQUOR

16 TAC §35.5

The Texas Alcoholic Beverage Commission proposes amendments to §35.5, relating to Private Carrier's Permit Safety Program.

Section 35.5 addresses insurance requirements for holders of Private Carrier Permits under Chapter 42 of the Alcoholic Beverage Code.

When §35.5 was originally adopted in 1996, the commission's intent was for it to qualify as a "comparable registration and safety program" under the provisions of Texas Civil Statutes Article 6676(c), §2(3) then in effect. The consequence of such a qualification was to release affected permittees from the obligation of complying with overlapping regulation by the commission and by the Texas Department of Transportation. See the *Texas Register* issue of August 16, 1996 (21 TexReg 7729).

Today, Transportation Code §643.002(5) simply exempts a vehicle operating under a Private Carrier Permit from the requirements of Chapter 643 of the Transportation Code, relating to

Motor Carrier Registration. Thus, it is unnecessary for the rule to have details demonstrating that it is comparable to the motor carrier registration and safety requirements now administered by the Texas Department of Motor Vehicles. Therefore, the proposed amendments would delete much of the specificity in the current rule regarding coverage while maintaining the core requirement that private carriers maintain a \$500,000 liability insurance policy to cover bodily injury and property damage.

Although strict comparability with Texas Department of Motor Vehicle requirements is no longer necessary, it is the commission's intent to impose a similar basic insurance requirement on private carriers as that imposed by the Texas Department of Motor Vehicles on others who transport alcoholic beverages. In that regard, proposed subsection (a) would exempt from coverage vehicles below a certain weight, which is consistent with Texas Department of Motor Vehicles regulation of other types of carriers.

In lieu of the requirement currently in subsection (a) that the Private Carrier Permit holder shall file proof of insurance with the commission, proposed subsection (c) would require the permit holder to file an affidavit that it is in compliance with the requirements for insurance coverage in this section.

Section 35.5 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

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

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

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the requirements for private carrier liability insurance will be easier to understand.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.texas.gov/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, April 28, 2016 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

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

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

§35.5. *Private Carrier [Carrier's] Permit Requirements [Safety Program].*

(a) Each holder of a private carrier [carrier's] permit shall carry at least \$500,000 of liability insurance for bodily injury and property damage covering every registered vehicle whose gross weight, registered weight or gross-weight rating exceeds 26,000 pounds. [and file proof of insurance with the commission for each vehicle registered. Such insurance must be sufficient to pay, not more than the amount of the insurance, for each final judgment against the permit holder (combined single limit) for bodily injury to or death of an individual per occurrence, and loss or damage to property (excluding cargo) per occurrence, or both.]

(b) Each holder of a private carrier [carrier's] permit shall maintain proof of insurance in their permitted vehicles at all times. [This proof shall be in the form prescribed by the commission and the Texas Department of Insurance in coordination with the Texas Department of Public Safety.]

[(1) No insurance policy or certificate of insurance will be accepted by the commission unless issued by an insurance or surety company licensed and authorized to do business in the State of Texas. The commission adopts Department of Insurance "Form E" (Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate) and "Form K" (Uniform Notice of Cancellation of Motor Carrier Insurance Policies) for the purposes of this section (which forms have been prescribed and approved by the Department of Insurance). These forms must be filed with the commission and signed or countersigned by an authorized agent of the insurance or surety company. The commission will accept a certificate of insurance issued by a surplus lines insurer that meets the requirements of Insurance Code, Article 1.14-2 and rules adopted by the Department of Insurance under that article.]

[(2) If the insurer or surety of a permittee subject to this rule becomes insolvent or becomes involved in a receivership or other insolvency proceeding, the permittee may apply for approval of a surety bond or insurance policy issued by another surety or insurer upon filing an affidavit with the commission. Such affidavit shall be executed by the permittee and show that:]

[(A) no accidents or claims have occurred during the insolvency of the insurance carrier or surety; and]

[(B) that all damages and claims have been satisfied; and]

[(C) the commission shall notify the Texas Department of Public Safety of each notice received under this subsection.]

(c) Each holder of a private carrier [carrier's] permit shall file with the commission [complete] an affidavit stating that the permittee has knowledge of, and will conduct operations in accordance with, all federal and state safety regulations, and that it is in compliance with the requirements for insurance coverage under this section.

(d) Private carrier permits are subject to the same protest and complaint policies as other permits. [The Department of Public Safety may request that the commission suspend or cancel a private carrier's permit if a permittee:]

[(1) has an unsatisfactory safety rating under 49 Code of Federal Regulations, Part 385; or]

[(2) has multiple violations of a provision of Texas Civil Statutes, Article 6675d; a rule adopted under that article or the Uniform Act Regulating Traffic on Highways (Texas Civil Statutes, Article 6701d). A request for suspension or revocation under this subsection shall be submitted in writing by the executive director of the Texas Department of Public Safety, and shall include appropriate documentation evidencing the violation. The commission or administrator may suspend or cancel an original or renewal permit in response to such

a request, after notice and hearing under the Alcoholic Beverage Code and the rules of the commission, pursuant to Alcoholic Beverage Code, §11.61(b)(7).]

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

Filed with the Office of the Secretary of State on March 23, 2016.

TRD-201601389

Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: May 8, 2016

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



CHAPTER 41. AUDITING

SUBCHAPTER C. RECORDS AND REPORTS BY LICENSEES AND PERMITTEES

16 TAC §41.21

The Texas Alcoholic Beverage Commission (Commission) proposes amendments to §41.21, relating to Industrial Permits.

Section 41.21 currently specifically addresses reporting requirements for holders of Industrial Permits under Chapter 38 of the Alcoholic Beverage Code. The proposed amendments would also include reporting requirements for holders of Local Industrial Alcohol Manufacturer's Permits under Chapter 47 of the Alcoholic Beverage Code, and record-keeping requirements for both types of permit holders.

The proposed amendments do not change the current requirement that the monthly report shall be on a form prescribed by the executive director, but delete the current list of items that must be included on the report. Proposed subsection (b)(3) clarifies that the required reports must account for all types of alcohol except denatured alcohol.

Proposed subsection (c) provides that holders of Industrial Permits and of local Industrial Alcohol Manufacturer's Permits shall maintain records of daily operations and make such records available to the Commission upon request.

Section 41.21 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for re-adoption each of its rules. The Commission has determined that the need for the section continues to exist but that it should be amended.

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

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

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because reporting and record keeping requirements

relating to Industrial Permits and Local Industrial Alcohol Manufacturer's Permits will be clearer.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the Commission's public website at http://www.tabc.texas.gov/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the Commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, April 28, 2016, at 1:30 p.m. in the commission meeting room at the Commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

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

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

§41.21. Industrial Permits and Local Industrial Alcohol Manufacturer's Permits.

(a) Purchase and sale.

(1) Holders of industrial permits may purchase or otherwise acquire alcohol [wine and vinous liquor in containers of not less than one gallon] without payment of state tax from the holders of licenses or permits who are authorized to sell to them, provided that the alcohol so acquired [in Texas, authorizing the manufacture or importation of wines, subject to restrictions herein provided and conditioned that such wine and vinous liquor] shall be used for no purpose other than the compounding or manufacture of medicines and food products.

(2) Holders of local industrial alcohol manufacturer's [Class A winery] permits may engage in the activities authorized in Alcoholic Beverage Code §47.01. [Class B winery permits, wholesaler's permits, Class B wholesaler's permits and wine bottler's permits may sell to the holders of industrial permits wine and vinous liquor in containers of not less than one gallon without payment of state tax and subject to restrictions herein provided.]

(b) Reports [Report-receiving].

(1) Each holder of an industrial permit and each holder of a local industrial alcohol manufacturer's permit shall make a monthly report to the commission on a form prescribed by the executive director [administrator (Industrial Receiving Record Wine)].

(2) The report shall be made and filed by the permittee with the commission at its office in Austin, Texas, on or before the 15th day of the month following the calendar month for which the report is made, [and shall show the following:]

- [(A) A full and complete record of all wine and vinous liquors received or possessed;]
- [(B) The date received;]
- [(C) From whom received;]
- [(D) Point of origin of the shipment;]
- [(E) Date of invoice;]
- [(F) Seller's invoice number;]
- [(G) Total number and size of containers received;]

[(H) The total amount in wine gallons of wine containing not more than 14% alcohol by volume;]

[(I) The same information in regard to wine received containing over 14% alcohol by volume and not more than 24% of alcohol by volume; and]

[(J) The name of the carrier making delivery.]

(3) The reports required by this section shall account for all types of alcohol except denatured alcohol. [Entries shall be made on this report within 24 hours after the date any wine is received or becomes the property of the permittee at any point within the State of Texas.]

[(4) The permittee shall give all information required to be reported on the prescribed form and the report shall be signed and sworn to by the permittee or his duly authorized representative before a notary public or other officer authorized to administer oaths.]

(c) Records. Each holder of an industrial permit and each holder of a local industrial alcohol manufacturer's permit shall maintain a separate record for each day's operation showing the date of operation, the opening and closing inventory of each type of alcohol, and the total gallons manufactured, purchased, sold and used. This record and related invoices and shipping documents shall be made available to a representative of the commission upon request. [Report—manufacturing]

[(1) Each holder of an industrial permit shall make a monthly report to the commission on a form prescribed by the administrator (Industrial Manufacturing Report).]

[(2) The report shall be made and filed by the permittee with the commission at its offices in Austin on or before the 15th day of the month following the calendar month for which the report is made and shall show:]

[(A) a full and complete record of all wine and vinous liquor received and used in the compounding or manufacture of medicines or food products during the month for which such report is made;]

[(B) the date of each day's operation;]

[(C) the opening inventory in wine gallons;]

[(D) receipts in wine gallons;]

[(E) wine gallons used in the compounding or manufacture of medicines or food products;]

[(F) closing inventory in wine gallons;]

[(G) total packages of resultant products, stating number and size of packages, that is, in case of bottles, fluid content; in case of packages, ounces or pounds and ounces;]

[(H) name of product manufactured; and]

[(I) the same information to be reported separately on wines in each tax classification.]

(3) On the closing day of the month for which the report is made an actual physical inventory shall be made of all wine on hand and results posted on the form directly below the figures shown on the closing day of the month, all wine to be considered as wine on hand until the product is packaged.]

[(4) Entries shall be made on this report within 48 hours after the date that any such wines are received or packaged.]

[(5) The permittee shall give all information required to be reported on the form and the report shall be signed and sworn to by the

permittee or his duly authorized representative before a notary public or other officer authorized to administer oaths.]

~~[(d) Report not required. Holders of industrial permits who do not purchase or handle wine or vinous liquors in any way shall not be required to make the reports herein required.]~~

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

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Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

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



16 TAC §41.25

The Texas Alcoholic Beverage Commission proposes amendments to §41.25, relating to Records to be Kept Separate.

Section 41.25 requires alcoholic beverage invoices to have the exact trade names of issuing and receiving permittees or licensees; requires permittees or licensees owning more than one business operating under separate permits or licenses, or a single business operating at two or more locations, to keep separate records for each business or place of business; requires permittees and licensees who are also engaged in any other kind of business to keep separate records for the alcoholic beverage business; requires permittees and licensees to keep records for two years, and make them available for inspection by the commission during reasonable office hours; and provides that making a false entry or alteration in records is a violation of the section.

The proposed amendments change the wording but not the substance of the section. The title would be changed to reflect that the rule addresses topics other than keeping records separate. Proposed subsection (d) clarifies that the two-year record retention requirement applies unless the Alcoholic Beverage Code or some other rule provides otherwise.

Section 41.25 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for reoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

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

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

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the requirements of the rule will be stated affirmatively and clearly.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.texas.gov/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, April 28, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

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

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

§41.25. Records and Invoice Requirements [To Be Kept Separate].

(a) An [It shall be unlawful for any permittee or licensee to issue or receive an] invoice that is required by the Alcoholic Beverage Code or by rule for any alcoholic beverage must have [wherein an invoice is required by law or by a rule of the commission unless the same bears] the exact trade name of the issuing permittee or licensee and the receiving permittee or licensee, if any.

(b) A permittee or licensee [It shall be unlawful for any person] who owns more than one business operating under separate permits or licenses or a single business operating at two or more locations under separate permits or licenses shall [to fail to] keep separate records for each such business or place of business.

(c) Each permittee and licensee who is also engaged in any other kind of business shall make and keep all records for the alcoholic beverage business that are required by the Alcoholic Beverage Code or by rule [for his alcoholic beverage business] separate and apart from any and all other records.

(d) All [sueh] records that are required by the Alcoholic Beverage Code or by rule shall be kept for a period of at least two years, unless a different period is specified in the Alcoholic Beverage Code or in some other rule, and shall be kept open for inspection by the commission or its authorized representatives during reasonable office hours.

(e) Making a [If any] false entry or any alteration [whatever is made] in [said] records that are required by the Alcoholic Beverage Code or by rule is[; same shall be] a violation of this section.

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

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TRD-201601422

Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

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



16 TAC §41.27

The Texas Alcoholic Beverage Commission proposes amendments to §41.27, relating to Tax Credit--Wine Processing.

Section 41.27 currently addresses the procedures for claiming a tax credit by holders of Wine Bottler's Permits under Chapter 18 of the Alcoholic Beverage Code or Winery Permits under Chapter 16 of the Alcoholic Beverage Code. Other sections of the commission's rules set forth the procedures for claiming a tax credit that are generally applicable to permittees and licensees and it is not necessary to have a separate rule prescribing different procedures for wine bottlers and wineries. Therefore, the proposed amendments would delete the tax credit provisions of the current rule.

With some changes to the language but not the substance, the remaining provisions of current §41.27 would be carried forward in the proposed amendments. The substance of current subsection (d) would become subsection (a). The substance of current subsection (e) would become subsection (b). The substance of current subsection (f) would become subsection (c).

Section 41.27 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

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

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

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the requirements of the rule will be stated affirmatively and clearly, and tax credit procedures for wine bottlers and wineries will be the same as those for other alcoholic beverage permittees and licensees.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.texas.gov/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, April 28, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

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

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

§41.27. [~~Tax Credit--~~Wine Processing.

(a) A holder of a wine bottler's permit may only bottle wine that it owns. A holder of a winery permit may only bottle wine that

it manufactures or blends. [A holder of a wine bottler's or winery permit who possesses wine on which the state excise tax has been paid and which is to be refiltered, reconditioned, or destroyed and who desires to be reimbursed for the state tax may notify the district supervisor of the commission. The district supervisor shall assign one or more inspectors to make an inventory of the amount of wine to be reconditioned, refiltered, or destroyed.]

(b) A holder of a wine bottler's permit or a holder of a winery permit may not bottle or rebottle wine from a container of less than five gallons. [The inventory report shall be executed in quadruplicate on a form furnished by the commission. Such form shall show: date; number and size of containers; trade name of permittee; permit number; class of permit; address and amount of tax paid on such wine. The report shall be signed and sworn to before a notary public or other officer authorized to administer oaths by the said permittee or his authorized representative. The de facto original and two other originals shall be sent by the inspector to the administrator and the fourth original given the permittee and retained by him in his permanent file for a period of two years.]

(c) A holder of a wine bottler's permit or a holder of a winery permit, or any agent, servant or employee of either, may not possess on the premises any wine in containers of less than five gallons except for the purpose of lawful sale. [The inventory shall be construed to be a request by the permittee for tax credit. If the administrator approves the request, he shall notify the permittee in writing. After receiving such written notice, the permittee may, on his next succeeding payment of the state excise tax on wine, deduct from his remittance any tax credit then existing on the account. If the administrator refuses the request in whole or in part he shall notify the permittee in writing and shall state therein the reason therefor.]

{(d) No holder of a wine bottler's permit shall bottle any wine other than that which is owned by him. No holder of a class A or class B winery permit shall bottle any wine other than that which is manufactured or blended by such permittee.]

{(e) It shall be unlawful for any holder of a wine bottler's permit or winery permit to bottle or rebottle wine from a container of less than five gallons.]

{(f) It shall be unlawful for the holder of a wine bottler's permit or winery permit, or any agent, servant or employee to have in his possession any wine, in containers of less than five gallons except for the purpose of lawful sale.]

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

Filed with the Office of the Secretary of State on March 23, 2016.

TRD-201601390

Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: May 8, 2016

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

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16 TAC §41.29

The Texas Alcoholic Beverage Commission proposes the repeal of §41.29, relating to Bonded Warehouse Breakage.

Section 41.29 addresses the requirement that bonded warehouses must store liquor in full and unbroken case lots, as

well as well as procedures to be followed in the event of actual breakage of stored liquor.

The commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for a rule addressing these issues continues to exist but that they are more appropriately addressed elsewhere. Therefore, the commission is proposing to repeal the text of this section and to address the issues in its proposed amendments to §41.39, relating to Warehouse Report.

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

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

Mr. Wilson has determined that for each year of the first five years that the proposed repeal will be in effect, the public will benefit because regulations relating to bonded warehouses will be consolidated and easier for the public to access.

Comments on the proposed repeal may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.texas.gov/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed repeal on Thursday, April 28, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

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

The proposed repeal affects Alcoholic Beverage Code §5.31 and Government Code §2001.039.

§41.29. Bonded Warehouse Breakage.

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

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Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: May 8, 2016

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



16 TAC §41.31

The Texas Alcoholic Beverage Commission proposes amendments to §41.31, relating to Tax.

Section 41.31 currently addresses taxes due from importers of distilled spirits and wine, and from manufacturers or importers of

ale and malt liquor. The proposed amendments would address the excise taxes due from manufacturers, wholesalers and distributors on the first sale of all alcoholic beverages, including the due date for the taxes and the appropriate references to the Alcoholic Beverage Code. The proposed amendments would also allow payments to be made by electronic funds transfers, checks and money orders, and provide that payments be made to the Texas Alcoholic Beverage Commission instead of to the State Treasurer of Texas.

Section 41.31 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for re-adoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

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

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

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the rule will apply to all parties owing excise taxes, additional forms of payment will be authorized, and the appropriate payee will be named.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.texas.gov/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, April 28, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

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

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

§41.31. Excise Tax.

Holders of licenses and permits authorizing the manufacture, wholesaling or distribution of distilled spirits, wine, ale, malt liquor, and beer in [importation of distilled spirits and wines into] this state must pay the assessed excise tax [assessed on distilled spirits and wines] not later than the 15th day of the month following the month in which occurs the "first sale" as this term is defined in [the] Alcoholic Beverage Code §§201.02, 201.41 and 203.02.[, §201.02. Holders of permits authorizing the manufacturing in this state or importation into this state of ale and malt liquor must pay the tax assessed on ale and malt liquor not later than the 15th day of the month following the month in which occurs the first sale or importation into this state of ale and malt liquor must pay the tax assessed on ale and malt liquor not later than the 15th day of the month following the month in which occurs the first sale

or importation as set forth in §201.41, et seq., of the Alcoholic Beverage Code. Remittance of the taxes on liquor, less 2.0% of the amount due when submitted within the required time, shall accompany the reports hereinafter provided for in §41.32 of this title (relating to Monthly Report of Distilled Spirits and Wines), §41.34 of this title (relating to Distilled Spirits Report of Miniatures), §41.36 of this title (relating to Monthly Report of Ale and Malt).] Remittance of all taxes shall be made by electronic funds transfer, check or money order made payable to the Texas Alcoholic Beverage Commission. [~~cashier's check, certified check, or United States postal money order, payable to the State Treasurer of Texas.~~]

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

Filed with the Office of the Secretary of State on March 24, 2016.

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Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: May 8, 2016

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



16 TAC §41.37

The Texas Alcoholic Beverage Commission proposes the repeal of §41.37, relating to Industrial Alcohol Report.

Section 41.37 addresses the monthly reporting requirement for holders of Industrial Permits under Chapter 38 of the Alcoholic Beverage Code.

The commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for a rule addressing this reporting requirement continues to exist but that it is more appropriately addressed elsewhere. Therefore, the commission is proposing to repeal the text of this section and to address the reporting requirement in its proposed amendments to §41.21, relating to Industrial Permits.

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

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

Mr. Wilson has determined that for each year of the first five years that the proposed repeal will be in effect, the public will benefit because regulations relating to Industrial Permits will be consolidated and easier for the public to access.

Comments on the proposed repeal may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.texas.gov/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed repeal on Thursday, April 28, 2016 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

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

The proposed repeal affects Alcoholic Beverage Code §5.31 and Government Code §2001.039.

§41.37. Industrial Alcohol Report.

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

Filed with the Office of the Secretary of State on March 23, 2016.

TRD-201601391

Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: May 8, 2016

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



16 TAC §41.38

The Texas Alcoholic Beverage Commission proposes amendments to §41.38, relating to Carrier Report.

Section 41.38 addresses the reporting requirements for holders of Carrier Permits under Chapter 41 of the Alcoholic Beverage Code. The only substantive change that would be made by the proposed amendments would be to eliminate the requirement that car number and initials be given on the monthly report. Otherwise, the proposed amendments are changes to the wording, including changing the reference from "the administrator" to "the executive director" consistent with Alcoholic Beverage Code §5.11(b) and commission practice.

Section 41.38 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for re-adoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

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

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

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because an unnecessary reporting requirement will be eliminated.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280.

They may also be submitted electronically through the commission's public website at http://www.tabc.texas.gov/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, April 28, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

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

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

§41.38. Carrier Report.

(a) Each holder of a carrier ~~[carrier's]~~ permit under Chapter 41 ~~[as provided in §41.04 et seq.,]~~ of the Alcoholic Beverage Code shall make a monthly report ~~[(carrier report)]~~ to the commission on forms prescribed by the ~~executive director [administrator]~~. The report shall be made and filed by the permittee with the commission at its offices ~~in [at]~~ Austin, Texas on or before the 15th day of the month following the calendar month for which the report is made. The report shall give an accurate account of all liquor, wine, ale, and beer transported by the carrier in interstate commerce during the month for which the report is made, and shall state the date of shipment, consignor, point of origin, consignee, destination, freight bill number, number of packages, ~~[car number and initials,]~~ kind of commodity shipped, and the date of delivery, and shall give all information requested by the form. If no interstate shipments were transported, a report shall be made stating such fact.

(b) This section shall not apply when it is necessary to cross this state in the transportation of an interstate or foreign shipment of liquor, wine, ale, or beer ~~[it is necessary to cross this state]~~.

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

Filed with the Office of the Secretary of State on March 28, 2016.

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Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

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



16 TAC §41.39

The Texas Alcoholic Beverage Commission proposes amendments to §41.39, relating to Warehouse Report.

Section 41.39 addresses reporting requirements for holders of Bonded Warehouse Permits under Chapter 46 of the Alcoholic Beverage Code.

Under the proposed amendments, reports would be required monthly, instead of within 24 hours of receipt or withdrawal of liquor from the warehouse. The proposed amendments also would incorporate the requirement (currently found in §41.29) that bonded warehouses must store liquor in full and unbroken case lots, as well as well as the procedures currently found in §41.29 to be followed in the event of actual breakage of stored

liquor. The commission is proposing to repeal the text of §41.29 in a separate rulemaking proceeding.

Proposed subsection (b)(4) adds a new requirement that the holder of a Bonded Warehouse Permit affirm on the monthly report that the permittee is in compliance with Alcoholic Beverage Code §46.03, which requires the holder of a Bonded Warehouse Permit to derive at least 50 percent of its gross revenue in a bona fide manner during each three-month period from the storage of goods or merchandise other than liquor. Although the affirmation on the monthly report would be a new requirement under the proposed amendments, the underlying obligation to remain in compliance with Alcoholic Beverage Code §46.03 is not new. The commission believes that the monthly affirmation will be a useful reminder to permit holders of their obligation to maintain the required balance of stored items and that Chapter 46 of the Alcoholic Beverage Code does not authorize liquor-only warehouses.

Section 41.39 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for re-adoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

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

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

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because regulations relating to bonded warehouses will be consolidated and easier for the public to access, and compliance with Chapter 46 of the Alcoholic Beverage Code will be easier to monitor.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.texas.gov/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, April 28, 2016 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

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

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

§41.39. Bonded Warehouse Report.

(a) Each holder of a bonded warehouse permit shall make a monthly ~~[daily]~~ report ~~[(warehouse report)]~~ to the commission on forms prescribed by the executive director ~~[administrator]~~.

(b) The report shall be made and filed by the permittee with the commission at its offices in [at] Austin, Texas[; within 24 hours after the receipt of withdrawal of any liquor; provided that no report shall be required for any calendar day during which no liquor is received into or withdrawn from such bonded warehouse]. The report shall [show]:

(1) state the name, address, and permit number of the warehouse;

(2) show the name, address, storage permit number, and class of permit of each customer storing liquor;

~~[(3) units in case lots;]~~

(3) ~~[(4) show monthly [daily] opening inventory receipts, withdrawals and closing inventory in gallons for each class of liquor; supported by itemized receiving tallies and itemized release orders]; and~~

(4) affirm that the permittee is in compliance with Alcoholic Beverage Code §46.03, which requires the holder of a bonded warehouse permit to derive at least 50 percent of its gross revenue in a bona fide manner during each three month period from the storage of goods or merchandise other than liquor.

~~[(5) the same information for liquor, wines 14% alcohol by volume and under, wines over 14% alcohol by volume and not more than 24% alcohol by volume, wines natural and carbonated and malt liquor.]~~

(c) Such reports shall be signed by the custodian of the bonded warehouse and filed with the commission on or before the 15th day of the month following the calendar month for which the report is made [daily].

(d) A holder of a bonded warehouse permit may only store or offer to store liquor in full and unbroken case lots. [The report for the closing day of each calendar month shall reflect the exact physical inventory of liquor in storage for each permittee and shall be sworn to and acknowledged. A separate report shall be made for each permittee who stores merchandise in the bonded warehouse.]

(e) Except as provided in this subsection, a holder of a bonded warehouse permit may only allow the withdrawal of liquor in full and unbroken case lots. When actual breakage occurs in a bonded warehouse which results in actual loss, the holder of a bonded warehouse permit may allow withdrawal in partial or broken case lots if the bonded warehouse permit holder executes duplicate affidavits documenting the actual breakage. One such affidavit shall be retained on file by the bonded warehouse permit holder, and the other affidavit shall be submitted with the permittee's monthly report required by this section. [Entries on this report shall be made on the date that merchandise is received or withdrawn and shall be kept up to date so that it can be checked by any authorized representatives of the commission at any time during reasonable office hours.]

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

Filed with the Office of the Secretary of State on March 23, 2016.

TRD-201601385

Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: May 8, 2016

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



16 TAC §41.43

The Texas Alcoholic Beverage Commission (Commission) proposes amendments to §41.43, relating to Authorization.

As currently written, §41.43 is intended to require that reports filed with the Commission be notarized. However, it incorrectly refers to "section" instead of "subchapter". The proposed amendments would correct that reference, make the language gender neutral, and eliminate the requirement that the reports be notarized. Current Commission practice does not require them to be notarized.

Section 41.43 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The Commission has determined that the need for the section continues to exist but that it should be amended.

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

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

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the section will contain the appropriate reference to the rules it covers and will conform to agency practice.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the Commission's public website at http://www.tabc.texas.gov/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the Commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, April 28, 2016, at 1:30 p.m. in the commission meeting room at the Commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

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

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

§41.43. *Required Signature [Authorization]*.

Each report required by this subchapter ~~[section]~~ shall be signed and affirmed to be true and correct ~~[sworn to]~~ by the permittee or licensee or a [his] duly authorized representative ~~[before a notary public, or other officer authorized to administer oaths]~~.

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

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Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
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For further information, please call: (512) 206-3489



16 TAC §41.44

The Texas Alcoholic Beverage Commission (Commission) proposes amendments to §41.44, relating to Copy.

As currently written, §41.44 is intended to require that copies of reports filed with the Commission be retained by the permittee or licensee for two years. However, it incorrectly refers to "section" instead of "subchapter". The proposed amendments would correct that reference.

Section 41.44 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The Commission has determined that the need for the section continues to exist but that it should be amended.

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

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

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the section will contain the appropriate reference to the rules it covers and will standardize record retention requirements for certain reports across all categories of alcoholic beverages.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the Commission's public website at http://www.tabc.texas.gov/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the Commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, April 28, 2016, at 1:30 p.m. in the commission meeting room at the Commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

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

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

§41.44. Report Retention [Copy].

An exact copy of each report required by this ~~subchapter~~ [section] shall be retained in the files of the permittee or licensee and shall be kept by said permittee or licensee for a period of at least two years, subject

to inspection of the commission or its authorized representative at all reasonable office hours.

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

Filed with the Office of the Secretary of State on March 23, 2016.

TRD-201601394

Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: May 8, 2016
For further information, please call: (512) 206-3489



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 103. HEALTH AND SAFETY SUBCHAPTER DD. COMMISSIONER'S RULES CONCERNING VIDEO SURVEILLANCE OF CERTAIN SPECIAL EDUCATION SETTINGS

19 TAC §103.1301

The Texas Education Agency proposes new §103.1301, concerning video surveillance of certain special education settings. The proposed new section would reflect the requirements in Texas Education Code (TEC), §29.022, as added by Senate Bill (SB) 507, 84th Texas Legislature, Regular Session, 2015.

In order to promote the safety of students receiving special education and related services in certain self-contained classrooms and other special education settings, SB 507, 84th Texas Legislature, Regular Session, 2015, added TEC, §29.022, to require video surveillance.

Beginning with the 2016-2017 school year, on request by a parent, trustee, or staff member, a school district or open-enrollment charter school must provide video equipment, including video cameras with audio recording capabilities, to campuses. Campuses that receive such equipment must place, operate, and maintain video cameras in certain self-contained classrooms or other special education settings. Video recordings are confidential under the section and may only be released for viewing to certain individuals.

The proposed new section would reflect the requirements in TEC, §29.022, and provide clarification. Specifically, the proposed new rule would specify the special educational settings to which the new law applies; define terms; clarify that special education funds cannot be used to implement the law; include a provision relating to dispute resolution; require that school district boards of trustees and charter school governing bodies adopt policies and procedures to implement the law; and include provisions relating to confidentiality issues and child abuse reporting.

The proposed new section would have no reporting implications. The proposed new section would require school districts and open-enrollment charter schools to adopt policies and procedures to implement TEC, §29.022, as added by SB 507, 84th Texas Legislature, Regular Session, 2015.

FISCAL NOTE. Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the proposed new section is in effect, enforcing or administering the proposed new section has no foreseeable economic implications relating to costs or revenues of the state or local governments. However, the authorizing statute, TEC, §29.022, has fiscal implications for school districts and open-enrollment charter schools.

PUBLIC BENEFIT/COST NOTE. Ms. Martinez has determined that for each year of the first five years the proposed new section is in effect the public benefit anticipated as a result of enforcing the new section would be providing clarification of certain requirements in TEC, §29.022, as added by SB 507, 84th Texas Legislature, Regular Session, 2015. There are no additional costs to individuals required to comply with the proposed new section, and the proposed new section will have no effect on local employment or local economy.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES. There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins April 8, 2016, and ends May 9, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.texas.gov or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on April 8, 2016.

STATUTORY AUTHORITY. The new section is proposed under the Texas Education Code (TEC), §29.022, as added by Senate Bill (SB) 507, 84th Texas Legislature, Regular Session, 2015, which requires video surveillance in certain special education settings in order to promote student safety. TEC, §29.022(k), authorizes the commissioner to adopt rules to implement and administer TEC, §29.022, including rules regarding the special education settings to which the section applies.

CROSS REFERENCE TO STATUTE. The new section implements the TEC, §29.022, as added by SB 507, 84th Texas Legislature, 2015.

§103.1301. Video Surveillance of Certain Special Education Settings.

(a) Requirement to implement. Beginning with the 2016-2017 school year, in order to promote student safety, on request by a parent, trustee, or staff member, a school district or open-enrollment charter school must provide video equipment to campuses in accordance with Texas Education Code (TEC), §29.022, and this section. Campuses that receive video equipment must place, operate, and maintain video cameras in self-contained classrooms or other special education settings in accordance with TEC, §29.022, and this section.

(b) Definitions. For purposes of TEC, §29.022, and this section, the following terms have the following meanings.

(1) Parent means a person described in TEC, §26.002, whose child receives special education and related services for at

least 50 percent of the instructional day in a self-contained classroom or other special education setting. Parent also means a student who receives special education and related services for at least 50 percent of the instructional day in a self-contained classroom or other special education setting and who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Texas Family Code, Chapter 31, unless the student has been determined to be incompetent or the student's rights have been otherwise restricted by a court order.

(2) Staff member means a teacher, related service provider, paraprofessional, or educational aide assigned to work in a self-contained classroom or other special education setting. Staff member also includes the principal or an assistant principal of the campus at which a self-contained classroom or other special education setting is located.

(3) Trustee means a member of a school district's board of trustees or a member of an open-enrollment charter school's governing body.

(4) Open-enrollment charter school means a charter granted to a charter holder under TEC, §12.101 or §12.152, identified with its own county district number.

(5) Self-contained classroom means a classroom on a regular school campus (i.e., a campus that serves students in general education and students in special education) of a school district or an open-enrollment charter school in which a majority of the students in regular attendance are provided special education and related services and have one of the following instructional arrangements/settings described in the student attendance accounting handbook adopted under §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook):

(A) self-contained (mild/moderate/severe) regular campus;

(B) full-time early childhood (preschool program for children with disabilities) special education setting;

(C) residential care and treatment facility--self-contained (mild/moderate/severe) regular campus;

(D) residential care and treatment facility--full-time early childhood special education setting;

(E) off home campus--self-contained (mild/moderate/severe) regular campus; or

(F) off home campus--full-time early childhood special education setting.

(6) Other special education setting means a classroom on a separate campus (i.e., a campus that serves only students who receive special education and related services) of a school district or open-enrollment charter school in which a majority of the students in regular attendance are provided special education and related services and have one of the following instructional arrangements/settings described in the student attendance accounting handbook adopted under §129.1025 of this title:

(A) residential care and treatment facility--separate campus; or

(B) off home campus--separate campus.

(7) Video camera means a video surveillance camera with audio recording capabilities.

(8) Video equipment means one or more video cameras and any technology and equipment needed to place, operate, and maintain video cameras as required by TEC, §29.022, and this section. Video

equipment also means any technology and equipment needed to store and access video recordings as required by TEC, §29.022, and this section.

(9) Incident means an event or circumstance that:

(A) involves alleged "abuse" or "neglect," as those terms are described in Texas Family Code, §261.001, of a student by an employee of the school district or charter school or alleged "physical abuse" or "sexual abuse," as those terms are described in Texas Family Code, §261.410, of a student by another student; or

(B) allegedly occurred in a self-contained classroom or other special education setting in which video surveillance under TEC, §29.022, and this section is conducted.

(c) Exclusions. A school district or open-enrollment charter school is not required to provide video equipment to a campus of another district or charter school or to a nonpublic school. In addition, the Texas School for the Deaf, the Texas School for the Blind and Visually Impaired, the Texas Juvenile Justice Department, and any other state agency that provides special education and related services to students are not subject to the requirements in TEC, §29.022, and this section.

(d) Use of funds. A school district or open-enrollment charter school may solicit and accept gifts, grants, and donations from any person to implement the requirements in TEC, §29.022, and this section. A district or charter school is not permitted to use Individuals with Disabilities Education Act, Part B, funds or state special education funds to implement the requirements of TEC, §29.022, and this section.

(e) Dispute resolution. The special education dispute resolution procedures in 34 Code of Federal Regulations, §§300.151-300.153 and 300.504-300.515, do not apply to complaints alleging that a school district or open-enrollment charter school has failed to comply with TEC, §29.022, and/or this section. Complaints alleging violations of TEC, §29.022, and/or this section must be addressed through the district's or charter school's local grievance procedures or other dispute resolution channels.

(f) Regular school year and extended school year services. TEC, §29.022, and this section apply to video surveillance during the regular school year. Decisions regarding whether video surveillance will be conducted in self-contained classrooms and other special education settings in which extended school year services are provided are left to local discretion.

(g) Policies and procedures. Each school district board of trustees and open-enrollment charter school governing body must adopt written policies relating to video surveillance under TEC, §29.022, and this section. At a minimum, the policies must include:

(1) a statement that video surveillance is for the purpose of promoting student safety in certain self-contained classrooms and other special education settings;

(2) the procedures for requesting video surveillance;

(3) the procedures for providing written notice to the campus staff and the parents of the students assigned to a self-contained classroom or other special education setting that video and audio surveillance will be conducted in the classroom or setting;

(4) a requirement that video cameras be operated at all times during the instructional day when students are in the self-contained classroom or other special education setting;

(5) a statement regarding the individuals who will have access to video cameras and video recordings and the roles and responsibilities of those individuals;

(6) a requirement that a campus continue to operate and maintain any video camera placed in a self-contained classroom or other special education setting for as long as the classroom or setting continues to satisfy the requirements in TEC, §29.022(a);

(7) a requirement that video cameras placed in a self-contained classroom or other special education setting be capable of recording video and audio of all areas of the classroom or setting, except that no video surveillance may be conducted of the inside of a bathroom or other area used for toileting or diapering a student or removing or changing a student's clothes;

(8) a statement that video recordings must be retained for at least six months after the date the video was recorded;

(9) a statement that the regular or continual monitoring of video is prohibited and that video recordings must not be used for routine teacher evaluation or monitoring or for any purpose other than the promotion of student safety;

(10) at the school district's or open-enrollment charter school's discretion, a requirement that campuses post a notice at the entrance of any self-contained classroom or other special education setting in which video cameras are placed stating that video and audio surveillance are conducted in the classroom or setting;

(11) the procedures for reporting a complaint alleging that an incident occurred in a self-contained classroom or other special education setting in which video surveillance under TEC, §29.022, and this section is conducted;

(12) the local grievance procedures for filing a complaint alleging violations of TEC, §29.022, and/or this section; and

(13) a statement that video recordings made under TEC, §29.022, and this section are confidential and a description of the limited circumstances under which the recordings may be viewed.

(h) Confidentiality of video recordings. A video recording made under TEC, §29.022, and this section is confidential and may only be viewed by the following individuals, to the extent not limited by the Family Educational Rights and Privacy Act of 1974 (FERPA) or other law:

(1) a staff member or other school district or charter school employee or a parent of a student involved in an incident described in subsection (b)(9) of this section that is documented by a video recording for which a complaint has been reported to the district or charter school;

(2) appropriate Texas Department of Family and Protective Services personnel as part of an investigation under Texas Family Code, §261.406;

(3) a peace officer, school nurse, or administrator trained in de-escalation and restraint techniques as provided by commissioner rule or a human resources staff member designated by the school district's board of trustees or open-enrollment charter school's governing body in response to a complaint or an investigation of an incident described in subsection (b)(9) of this section; or

(4) appropriate Texas Education Agency or State Board for Educator Certification personnel or agents as part of an investigation.

(i) Child abuse and neglect reporting. If a person described in subsection (h)(3) or (4) of this section views a video recording and has cause to believe that the recording documents possible abuse or neglect of a child under Texas Family Code, Chapter 261, the person must notify the Texas Department of Family and Protective Services or other authority in accordance with the local policy adopted under

§61.1051 of this title (relating to Reporting Child Abuse and Neglect and Texas Family Code, Chapter 261).

(j) Disciplinary actions and legal proceedings. If a person described in subsection (h)(2), (3), or (4) of this section views a video recording and believes that it documents a possible violation of school district, open-enrollment charter school, or campus policy, the person may allow access to the recording to appropriate legal and human resources personnel of the district or charter school to the extent not limited by FERPA or other law. A recording believed to document a possible violation of school district, open-enrollment charter school, or campus policy may be used in a disciplinary action against district or charter school personnel and must be released in a legal proceeding at the request of a parent of the student involved in the incident documented by the recording.

(k) Access rights. Subsections (i) and (j) of this section do not limit the access of a student's parent to an educational record of the student under FERPA or other law. To the extent any provisions in TEC, §29.022, and this section conflict with FERPA or other federal law, federal law prevails.

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

Filed with the Office of the Secretary of State on March 28, 2016.

TRD-201601437

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: May 8, 2016

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



TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

The Texas Board of Architectural Examiners proposes amendments to §1.5, relating to Terms Defined Herein, and repeal of §1.191, relating to Description of Experience Required for Registration by Examination; and §1.192, relating to Additional Criteria.

Under §1.21 and §1.22, the Board requires applicants for architectural registration by examination and reciprocity to complete the Intern Development Program (IDP), which is administered by the National Council of Architectural Registration Boards (NCARB). IDP is a standardized program that is accepted by Texas and most other jurisdictions to demonstrate sufficient experience to be registered as an architect. Recently, NCARB announced an overhaul of the IDP program, scheduled to occur in June of 2016, that will consolidate the seventeen current IDP "experience areas" into six broad practice-based experience areas. Because the Board has previously adopted the seventeen practice areas into rule, the Board must amend its rules in order to maintain consistency with the NCARB IDP program.

Rather than replace the previously adopted rules with the new IDP requirements, the Board proposes to delete the specific description of the IDP requirements in §1.191 and §1.192, and rely

instead on references within §1.21 and §1.22 that applicants must complete the intern development program, which is further defined in §1.5(36) as the internship program established, interpreted, and enforced by NCARB. Relying upon reference to the NCARB program will eliminate needless repetition in the Board's rules, and decrease the possibility of confusion from applicants on whether the Board's requirements differ from those of NCARB.

Additionally, the Board proposes to delete §1.5(37), which contains a definition for "intern development training requirement," which is a redundant term that is made obsolete by the deletion of §1.191 and §1.192.

Lance Brenton, General Counsel, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule and repeals are in effect, the amendment and repeals will have no significant fiscal impact upon state government and no fiscal impact on local government.

Lance Brenton, General Counsel, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule and repeals are in effect, the expected public benefit is to simplify the IDP requirements for applicants who will be required to gain experience in six practice areas opposed to seventeen. Additionally, the deletion of redundancies will simplify the Board's rules.

The proposed rules will have no adverse impact upon those who are required to comply with them. The proposed amendment and repeals will have no negative fiscal impact on small or micro-business. Therefore, no Economic Impact Statement and Regulatory Flexibility Analysis are required.

Comments may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337. Comments must be received by May 10, 2016.

SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §1.5

Statutory Authority

The amendment is proposed pursuant to §1051.202 and §1051.705(a)(2), Texas Occupations Code, which authorizes the Texas Board of Architectural Examiners to implement Chapter 1051, Texas Occupations Code and to prescribe satisfactory architectural experience to sit for the registration examination, respectively.

Cross Reference to Statute

The proposed amendment to this rule does not affect any other statutes.

§1.5. *Terms Defined Herein.*

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

(1) - (36) (No change.)

~~[(37) Intern Development Training Requirement--Architectural experience necessary for an Applicant to obtain architectural registration by examination in Texas.]~~

~~(37) [(38)] Institutional Residential Facility--A building intended for occupancy on a 24-hour basis by persons who are receiving custodial care from the proprietors or operators of the building. Hospitals, dormitories, nursing homes and other assisted living facili-~~

ties, and correctional facilities are examples of buildings that may be Institutional Residential Facilities.

(38) [(39)] Licensed--Registered.

(39) [(40)] Member Board--An architectural registration board that is part of the nonprofit federation of architectural registration boards known as NCARB.

(40) [(41)] NAAB--National Architectural Accrediting Board.

(41) [(42)] National Architectural Accrediting Board (NAAB)--An agency that accredits architectural degree programs in the United States.

(42) [(43)] National Council of Architectural Registration Boards (NCARB)--A nonprofit federation of architectural registration boards from fifty-five (55) states and territories of the United States.

(43) [(44)] NCARB--National Council of Architectural Registration Boards.

(44) [(45)] Nonregistrant--An individual who is not an Architect.

(45) [(46)] Practice Architecture--Perform or do or offer or attempt to do or perform any service, work, act, or thing within the scope of the Practice of Architecture.

(46) [(47)] Practicing Architecture--Performing or doing or offering or attempting to do or perform any service, work, act, or thing within the scope of the Practice of Architecture.

(47) [(48)] Practice of Architecture--A service or creative work applying the art and science of developing design concepts, planning for functional relationships and intended uses, and establishing the form, appearance, aesthetics, and construction details for the construction, enlargement, or alteration of a building or environs intended for human use or occupancy, the proper application of which requires education, training, and experience in those matters.

(A) The term includes:

(i) establishing and documenting the form, aesthetics, materials, and construction technology for a building, group of buildings, or environs intended to be constructed or altered;

(ii) preparing or supervising and controlling the preparation of the architectural plans and specifications that include all integrated building systems and construction details, unless otherwise permitted under Texas Occupations Code, §1051.606(a)(4); and

(iii) observing the construction, modification, or alteration of work to evaluate conformance with architectural plans and specifications described in clause (ii) of this subparagraph for any building, group of buildings, or environs requiring an architect.

(B) The term "practice of architecture" also includes the following activities which, pursuant to Texas Occupations Code §1051.701(a), may be performed by a person who is not registered as an Architect:

(i) programming for construction projects, including identification of economic, legal, and natural constraints and determination of the scope and spatial relationship of functional elements;

(ii) recommending and overseeing appropriate construction project delivery systems;

(iii) consulting, investigating, and analyzing the design, form, aesthetics, materials, and construction technology used for

the construction, enlargement, or alteration of a building or environs and providing expert opinion and testimony as necessary;

(iv) research to expand the knowledge base of the profession of architecture, including publishing or presenting findings in professional forums; and

(v) teaching, administering, and developing pedagogical theory in academic settings offering architectural education.

(48) [(49)] Principal--An architect who is responsible, either alone or with other architects, for an organization's Practice of Architecture.

(49) [(50)] Prototypical--From or of an architectural design intentionally created not only to establish the architectural parameters of a building or facility to be constructed but also to serve as a functional model on which future variations of the basic architectural design would be based for use in additional locations.

(50) [(51)] Public Entity--A state, a city, a county, a city and county, a district, a department or agency of state or local government which has official or quasi-official status, an agency established by state or local government though not a department thereof but subject to some governmental control, or any other political subdivision or public corporation.

(51) [(52)] Registered--Licensed.

(52) [(53)] Registrant--Architect.

(53) [(54)] Regulatory Approval--The approval of Construction Documents by the applicable Governmental Entity after a review of the architectural content of the Construction Documents as a prerequisite to construction or occupation of a building or a facility.

(54) [(55)] Reinstatement--The procedure through which a Surrendered or revoked Texas architectural registration certificate is restored.

(55) [(56)] Renewal--The procedure through which an Architect pays a periodic fee so that the Architect's registration certificate will continue to be effective.

(56) [(57)] Responsible Charge--That degree of control over and detailed knowledge of the content of technical submissions during their preparation as is ordinarily exercised by registered architects applying the applicable architectural standard of care.

(57) [(58)] Revocation or Revoked--The termination of an architectural registration certificate by the Board.

(58) [(59)] Rules and Regulations of the Board--22 Texas Administrative Code §§1.1 et seq.

(59) [(60)] Rules of Procedure of SOAH--1 Texas Administrative Code §§155.1 et seq.

(60) [(61)] Secretary-Treasurer--The member of the Board responsible for signing the official copy of the minutes of each Board meeting and maintaining the record of Board members' attendance at Board meetings.

(61) [(62)] SOAH--State Office of Administrative Hearings.

(62) [(63)] Sole Practitioner--An Architect who is the only design professional to offer or render architectural services on behalf of a business entity.

(63) [(64)] State Office of Administrative Hearings (SOAH)--A Governmental Entity created to serve as an independent

forum for the conduct of adjudicative hearings involving the executive branch of Texas government.

(64) [(65)] Supervision and Control--The amount of oversight by an architect overseeing the work of another whereby:

(A) the architect and the individual performing the work can document frequent and detailed communication with one another and the architect has both control over and detailed professional knowledge of the work; or

(B) the architect is in Responsible Charge of the work and the individual performing the work is employed by the architect or by the architect's employer.

(65) [(66)] Supplemental Document--A document that modifies or adds to the technical architectural content of an existing Construction Document.

(66) [(67)] Surrender--The act of relinquishing a Texas architectural registration certificate along with all privileges associated with the certificate.

(67) [(68)] Sustainable Design--An integrative approach to the process of design which seeks to avoid depletion of energy, water, and raw material resources; prevent environmental degradation caused by facility and infrastructure developments during their implementation and over their life cycle; and create environments that are livable and promote health, safety and well-being. Sustainability is the concept of meeting present needs without compromising the ability of future generations to meet their own needs.

(68) [(69)] TBAE--Texas Board of Architectural Examiners.

(69) [(70)] TDLR--Texas Department of Licensing and Regulation.

(70) [(71)] Texas Department of Licensing and Regulation (TDLR)--A Texas state agency responsible for the implementation and enforcement of the Texas Architectural Barriers Act.

(71) [(72)] Texas Guaranteed Student Loan Corporation (TGSGLC)--A public, nonprofit corporation that administers the Federal Family Education Loan Program.

(72) [(73)] TGSGLC--Texas Guaranteed Student Loan Corporation.

(73) [(74)] Vice-Chair--The member of the Board who serves as the assistant presiding officer and, in the absence of the Chair, serves as the Board's presiding officer. If necessary, the Vice-Chair succeeds the Chair until a new Chair is appointed.

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

Filed with the Office of the Secretary of State on March 28, 2016.

TRD-201601429

Lance Brenton

General Counsel

Texas Board of Architectural Examiners

Earliest possible date of adoption: May 8, 2016

For further information, please call: (512) 305-8519



SUBCHAPTER J. INTERN DEVELOPMENT TRAINING REQUIREMENT

22 TAC §1.191, §1.192

Statutory Authority

The repeals are proposed pursuant to §1051.202 and §1051.705(a)(2), Texas Occupations Code, which authorizes the Texas Board of Architectural Examiners to implement Chapter 1051, Texas Occupations Code and to prescribe satisfactory architectural experience to sit for the registration examination, respectively.

Cross Reference to Statute

The proposed repeals do not affect any other statutes.

§1.191. *Description of Experience Required for Registration by Examination.*

§1.192. *Additional Criteria.*

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

Filed with the Office of the Secretary of State on March 28, 2016.

TRD-201601430

Lance Brenton

General Counsel

Texas Board of Architectural Examiners

Earliest possible date of adoption: May 8, 2016

For further information, please call: (512) 305-8519



SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §1.22

The Texas Board of Architectural Examiners (Board) proposes the amendment of §1.22, pertaining to registration of architects by reciprocal transfer.

Under Texas Occupations Code §1051.305(a)(1) and §1.22(a)(1), a person may apply for architectural registration by reciprocal transfer if the person holds an architectural registration that is active and in good standing in another jurisdiction, and the other jurisdiction has licensing or registration requirements substantially equivalent to Texas registration requirements. Subsection (b)(1) of the rule states that an applicant can show eligibility by either becoming NCARB certified, or by demonstrating completion of the intern development program (IDP) and the architect registration exam (ARE). The rule does not address any education requirement, which is the "third leg" requirement for Texas registration. Section 1.21, which describes the requirements for registration by examination, requires applicants to have graduated with a professional degree from an educational program accredited by the National Architectural Accreditation Board (NAAB), in addition to completing IDP and the ARE. Because the Board's requirements for registration by examination under §1.21 require an applicant to have graduated with a professional degree from a NAAB-accredited program, the Board has interpreted §1.22(a)(1) to require an applicant to show substantially equivalent education to qualify for registration by reciprocity.

The purpose of the proposed amendment is to provide greater clarity of the Board's process of requiring an applicant for reciprocal registration to either meet all three initial registration requirements, including successful completion of a professional degree

in architecture as described by §1.21(a)(1), or to qualify for registration under §1.22(b)(2), which allows an applicant who does not have a NAAB-accredited degree to demonstrate eligibility through NCARB certification. NCARB certification is a process by which any educational deficiency resulting from the lack of a NAAB-accredited degree is supplemented through demonstration of experience in the relevant practice area. This process allows an applicant to demonstrate substantial equivalence with the Board's eligibility requirements, as required by Texas Occupations Code §1051.305(a)(1) and §1.22(a)(1).

Lance Brenton, General Counsel, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, the amendment will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

Mr. Brenton has determined that, for the first five-year period the amended rule is in effect, the expected public benefit is the removal of ambiguity in the Board's reciprocal registration requirements, the promotion of the public health and safety by requiring appropriate educational backgrounds for reciprocity applicants, and consistency within the Board's rules relating to eligibility requirements for registration by examination and reciprocity, resulting in a substantially equivalent standard for both registration methods.

Applicants required to comply with the amended rule who have not graduated from a NAAB-accredited program will be required to demonstrate NCARB certification in order to qualify for registration by reciprocity.

The amendment to the rule will have no negative fiscal impact on small or micro-business, and no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Comments may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337. Comments must be received by May 10, 2016.

Statutory Authority

The amendment is proposed pursuant to Texas Occupations Code §1051.202, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapters 1051, 1052, and 1053 of the Texas Occupations Code; Texas Occupations Code §1051.705, which grants the Board authority to recognize and approve architecture educational programs; and §1051.305, which grants the Board authority to issue registration by reciprocity for an applicant who holds a license or certificate of registration issued by another jurisdiction that has licensing or registration requirements substantially equivalent to those of Texas.

Cross Reference to Statute

The proposed amendments to this rule does not affect any other statutes.

§1.22. *Registration by Reciprocal Transfer.*

(a) A person may apply for architectural registration by reciprocal transfer if the person holds an architectural registration that is active and in good standing in another jurisdiction and the other jurisdiction:

(1) has licensing or registration requirements substantially equivalent to Texas registration requirements; or

(2) has entered into a reciprocity agreement with the Board that has been approved by the Governor of Texas.

(b) In order to obtain architectural registration by reciprocal transfer, an Applicant must demonstrate the following:

(1) the Applicant has:

(A) successfully completed a professional degree in architecture as described by §1.21(a)(1) of this subchapter;

(B) [~~A~~] successfully completed the Architect Registration Examination (ARE) or another architectural registration examination which the National Council of Architectural Registration Boards (NCARB) has approved as conforming to NCARB's examination standards; and

(C) [~~B~~] successfully completed the requirements of the Intern Development Program (IDP) or acquired at least three years of acceptable architectural experience following registration in another jurisdiction; or

(2) the Applicant has been given Council Certification by NCARB and such Council Certification is not currently in an expired or revoked status.

(c) An Applicant for architectural registration by reciprocal transfer must remit the required registration fee to the Board within 60 days after the date of the tentative approval letter sent to the Applicant by the Board.

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

Filed with the Office of the Secretary of State on March 28, 2016.

TRD-201601428

Lance Brenton

General Counsel

Texas Board of Architectural Examiners

Earliest possible date of adoption: May 8, 2016

For further information, please call: (512) 305-8519

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 527. PEER REVIEW

22 TAC §527.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.2, concerning Definitions.

Background, Justification and Summary

The amendment to §527.2 adds the definition of "assigned review date," replaces "Peer Review State Board Access" with "Facilitated State Board Access," and includes changes intended to provide clarity.

Fiscal Note

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

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect, the public benefits expected as a result of adoption of the proposed amendment will be a clearer understanding of the terms found in the Peer Review program.

There will be no probable economic cost to persons required to comply with the amendment, and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business and Micro-Business Impact Analysis

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

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on May 9, 2016.

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

Statutory Authority

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

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

§527.2. Definitions.

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

(1) "Review" or "review program" means the review conducted under the peer review program.

(2) "Review year" means the one-year (twelve-month) period covered by the review. Engagements selected for review normally would have periods ending during the year under review.

(3) "Sponsoring organization" means an entity that meets the standards specified by the board for administering the review. The board shall periodically publish a list of sponsoring organizations, which have been approved by the board.

(4) "Special reports" include but are not limited to reports issued under professional standards in connection with the following:

(A) specified elements, accounts, or items of a financial statement;

(B) compliance with aspects of contractual agreements or regulatory requirements related to audited financial statements;

(C) financial presentations to comply with contractual agreements or regulatory provisions; or

(D) financial information presented in prescribed forms or schedules that require a prescribed form of auditor's reports.

(5) "Firm inspection program" means the process of firm inspection administered by the PCAOB.

(6) "Rating" of a peer review refers to the type of report issued. The three types of reports are pass, pass with deficiency(ies), or fail. The peer review rating is clearly indicated in the final paragraph of the review report. A peer review report with a rating of pass with deficiency(ies) or fail is considered a deficient review.

(7) "Assigned review date" is the reporting due date to the board of an accepted peer review report. It is the end date of the review process, not the beginning.

(8) [(7)] "Acceptance date" of an AICPA or TSCPA peer review is the date that the sponsoring organization's peer review report committee (PRRC), referred to in §527.9(a)(1) of this chapter (relating to Procedures for a Sponsoring Organization), is presented the peer review report on a review with the rating of pass and the PRRC approves the review. The acceptance date and in this case the completion date of the peer review are the same date and is noted in a letter from the administering entity to the reviewed firm. The PRRC will be presented with the peer review report and the firm's letter of response on reviews with a rating of pass with deficiencies or fail. Ordinarily, the PRRC will require the reviewed firm to take corrective action(s) and those actions will be communicated in a letter to the firm from the administering entity. In this circumstance, the "acceptance date" is defined as the date that the reviewed firm signs the letter from the administering entity agreeing to perform the required corrective action(s).

(9) [(8)] "Completion date" of an AICPA or TSCPA peer review is the date that the sponsoring organization's PRRC, referred to in §527.9(a)(1) of this chapter, is presented the corrective action and the committee decides that the reviewed firm has performed the agreed-to corrective action(s) to the committee's satisfaction and the committee requires no additional corrective action(s) by the firm. The date is noted in a final letter from the administering entity to the reviewed firm.

(10) [(9)] "AICPA Public File" is the file for firms that are members of AICPA's Employee Benefit Plan Audit Quality Center, Governmental Audit Quality Center, or Private Companies Practice Section who post their review information to this public file on AICPA's web site as a membership requirement. Information in the public file includes the firm's most recently accepted peer review report and the firm's response thereto, if any.

(11) [(10)] "Facilitated [Peer Review] State Board Access (FSBA [PRSB])" is the state board limited access web site that provides the most recently accepted peer review report, the firm's letter of response (LOR), the corrective action letter (CAL), and the final letter of acceptance (FLOA).

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

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842



22 TAC §527.3

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.3, concerning Standards for Peer Reviews and Sponsoring Organizations.

Background, Justification and Summary

The amendment to §527.3 deletes "SPRPR" and replaces it with "the Standards" in subsection (a).

Fiscal Note

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

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect, the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

There will be no probable economic cost to persons required to comply with the amendment, and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business and Micro-Business Impact Analysis

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

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on May 9, 2016.

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

Statutory Authority

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

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

§527.3. *Standards for Peer Reviews and Sponsoring Organizations.*

(a) The board adopts Standards for Performing and Reporting on Peer Reviews (the Standards [SPRPR]) promulgated by AICPA and for public company audit firms, the firm inspection standards required under the Sarbanes-Oxley Act of 2002 (SOX), as its minimum standards for review of firms.

(b) Qualified sponsoring organizations shall be the AICPA Peer Review Program, the TSCPA's Peer Review Program and state CPA societies fully involved in the administration of the AICPA Peer Review Program, the PCAOB, and such other entities which are approved by the board.

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

Filed with the Office of the Secretary of State on March 24, 2016.

TRD-201601409

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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



22 TAC §527.4

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.4, concerning Enrollment and Participation.

Background, Justification and Summary

The amendment to §527.4 clarifies that the relevant services are attest services, adds grammatical revisions for clarity, reduces the amount of time to enroll in a peer review program from 12 months to 30 days, designates the executive director with the authority to require an accelerated peer review, requires the firm to notify the Board of any extensions of time to complete a review within 15 days of the extension, submit a request to the Board of a change in sponsoring organization within 30 days of having been rejected by their sponsoring organization, and identifying succeeding firm as a successor firm.

Fiscal Note

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

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect, the public benefits expected as a result of adoption of the proposed amendment will be the Board acting

sooner in preventing the issuance of substandard attest services work.

There will be no probable economic cost to persons required to comply with the amendment, and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business and Micro-Business Impact Analysis

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

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on May 9, 2016.

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

Statutory Authority

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

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

§527.4. Enrollment and Participation.

(a) Participation in the program is required of each firm licensed or registered with the board that performs any attest services [~~service or any accounting and/or auditing engagements, including audits, reviews, compilations, forecasts, projections, or special reports~~] as defined in §901.002 of the Act (relating to General Definitions) and §501.52(4), (11) and (23) of this title (relating to Definitions). A firm whose highest level of service is [~~which only performs~~] preparation engagements under SSARS is not required to participate in the program.

(b) A firm that does not perform attest services as set out in subsection (a) of this section shall annually submit a request for the exemption in writing to the board with an explanation of the services offered by the firm. A firm which begins providing attest services as set out in subsection (a) of this section shall notify the board of the change in status within 30 days of the change in status, provide the board with enrollment information within 90 days of the date the services were first provided and have a peer review performed within 18 months of the date the services were first provided.

(c) Each firm required to participate under subsection (a) of this section shall enroll in the applicable programs of an approved sponsoring organization within 30 days [~~12 months~~] from its initial licensing date or the performance of services that require a review. The firm shall adopt the review due date assigned by the sponsoring organization, and must notify the board of the peer review due date within 30 days of its assignment. In addition, the firm shall schedule and begin an additional review within three years of the previous review's due date, or earlier as may be required by the sponsoring organization, ~~or~~ a committee of the board or the board's executive director. It is the responsibility of the firm to anticipate its needs for review services in sufficient time to enable the reviewer to complete the review by the assigned review due date.

(d) In the event that a firm is merged, otherwise combined, dissolved, or separated, the sponsoring organization shall determine which firm is considered the successor [~~succeeding~~] firm. The successor [~~succeeding~~] firm shall retain its peer review status and the review due date.

(e) The board will accept extensions granted by the sponsoring organization to complete a review, provided the board is notified by the firm within 15 [~~20~~] days of the date that an extension is granted.

(f) A firm that has been rejected by a sponsoring organization for any reason must make a request in writing to the board for authorization to enroll in a program of another sponsoring organization. Such request shall be made within 30 days of notification by the sponsoring organization.

(g) A firm choosing to change to another sponsoring organization may do so provided that the firm authorizes the previous sponsoring organization to communicate to the succeeding sponsoring organization any outstanding corrective actions related to the firm's most recent review. Any outstanding actions must be cleared and outstanding fees paid prior to transfer between sponsoring organizations.

(h) An out-of-state firm practicing in this state pursuant to a practice privilege provided for in §901.461 of the Act (relating to Practice by Certain Out-of-State Firms) and §517.1 and §517.2 of this title (relating to Practice by Certain Out of State Firms and Practice by Certain Out of State Individuals) of these regulations must comply with the peer review program of the state in which the firm is licensed.

(i) An out-of-state firm practicing in this state pursuant to a practice privilege from a state without a peer review program must comply with §901.159 of the Act (relating to Peer Review) and Chapter 517 of this title (relating to Practice by Certain Out-of-State Firms and Individuals).

(j) An out-of-state firm practicing in this state pursuant to a practice privilege must submit its peer review (or equivalent) documentation upon request of the board.

(k) Interpretive Comment. If a firm is subject to inspections pursuant to PCAOB and also performs attest work not subject to such inspections, the firm must enroll in a peer review program for review of its non-public company attest work in addition to the firm inspection program required by the PCAOB.

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

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: May 8, 2016
For further information, please call: (512) 305-7842



22 TAC §527.5

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.5, concerning Successive Deficient Reviews.

Background, Justification and Summary

The amendment to §527.5 will make it clearer that the Board has the authority to take action after only one deficient peer review. The Board action could include an accelerated review but could also include removing attest services from the firm's practice in addition to imposing a sanction. If, however, a firm fails two consecutive peer reviews the proposed changes would not allow the firm to provide attest services except to complete the services it had already begun and then only after a pre-issuance review by a third party of the firm's work. The amendment also states that a firm that has been taken out of attest work, but allowed to complete work it had already begun, be given up to 60 days as opposed to 30 days as proposed, to close out the engagement.

Fiscal Note

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

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be the Board acting sooner in preventing the issuance of substandard attest services work.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business and Micro-Business Impact Analysis

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

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on May 9, 2016.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have

an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

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

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

§527.5. *[Successive] Deficient Reviews.*

(a) The board at its sole discretion may require a firm which has received a rating of pass with deficiencies or fail to have an accelerated peer review or subject it to any other disciplinary or corrective action under the Act.

(b) [(a)] A firm, including a successor [succeeding] firm, which receives two consecutive reviews on a system or engagement review with ratings [a rating] of either pass with deficiencies or [and/or] fail in any order, or two pass with deficiencies shall [on a system or engagement review may] be required to have an accelerated review [by the Peer Review Committee].

[(b)] If that accelerated review results in a rating of pass with deficiencies or fail:

(1) the firm may complete attest engagements for which field work has already begun only if:

(A) prior to issuance of any report, the engagement is reviewed and approved by a third party reviewer acceptable to the chairman of the Technical Standards Review Committee or the Peer Review Committee; and

(B) the engagement is completed within 60 [30] days of the acceptance of the peer review report[; and LOR by the sponsoring organization; and

(2) the firm shall not perform any other attest services [service including any accounting and/or auditing engagements, including, audits, reviews, compilations (as well as compilations where no report is required), forecasts, projections, or other special reports] for a period of three years or until given permission by the board to resume this practice.

(c) A firm, including a successor firm, which receives two consecutive reviews with a rating of fail on a system or engagement review shall not perform any other attest services for a period of three years or until given permission by the board to resume this practice. The firm may complete attest engagements for which field work has already begun only if:

(1) prior to issuance of any report, the engagement is reviewed and approved by a third party reviewer acceptable to the chairman of the Technical Standards Review Committee or the Peer Review Committee; and

(2) the engagement is completed within 60 days of the acceptance of the peer review report and LOR by the sponsoring organization.

(d) [(e)] A firm may petition the board in writing for a waiver from the provisions of this rule.

[(d) The board at its discretion may require a firm which has received a rating of pass with deficiencies or fail to have an accelerated peer review or subject it to any other disciplinary or corrective action under the Act.]

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

Filed with the Office of the Secretary of State on March 24, 2016.

TRD-201601411

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: May 8, 2016

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



22 TAC §527.6

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.6, concerning Reporting to the Board.

Background, Justification and Summary

The amendment to §527.6 will delete "PRSB" and replace it with "FSBA."

Fiscal Note

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

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business and Micro-Business Impact Analysis

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

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to

his attention at (512) 305-7854, no later than noon on May 9, 2016.

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

Statutory Authority

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

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

§527.6. Reporting to the Board.

(a) A firm must submit to the board:

(1) a copy of the peer review report and the FLOA from the sponsoring organization, if such report has a rating of pass;

(2) a copy of the peer review report, the firm's LOR, the CAL, and FLOA if the report has a rating of pass with deficiencies or fail; or

(3) a copy of any final report resulting from any inspection by the PCAOB firm inspection program together with documentation of any significant deficiencies and findings and the firm's response.

(b) Any report or document submitted to the board under this section is confidential pursuant to the Act.

(c) Any report or document (collectively referred to as "documents") required to be submitted under subsection (a) of this section shall be filed with the board as provided below:

(1) Peer review documents will be made available by the TSCPA for firms enrolled in the AICPA and TSCPA Peer Review Programs and administered by the TSCPA. Peer review documents will be made available by the TSCPA by posting such documents within 30 days of issuing its notice of acceptance to such firms on the FSBA [PRSB] web site. The reviewed firm must, within 10 days of receipt of the notice of completion from the TSCPA, complete the board's Peer Review Compliance Reporting form and submit it to the board along with the required documents.

(2) Firms otherwise enrolled in the AICPA peer review program (including those whose peer reviews are administered by the NPRC) must, within 10 days of receipt of the notice of completion from the sponsoring organization, complete the board's Peer Review Compliance Reporting form and submit it to the board along with the required documents. However, this requirement may be met by allowing the firm's peer review documents to be posted on the FSBA [PRSB] web site, with access granted to the board within 30 days of issuing its notice of acceptance to such firms on the FSBA [PRSB] web site.

(3) Firms enrolled in the PCAOB firm inspection program must, within 10 days of receipt of the notice of completion from the

PCAOB, complete the board's Peer Review Compliance Reporting form and submit it to the board along with the required documents.

(d) The information required under subsection (c) of this section must be filed with the board either by mail or electronically such as by fax, email, or FSBA [PRSBA] web site.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: May 8, 2016

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



22 TAC §527.7

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.7, concerning Peer Review Oversight Board.

Background, Justification and Summary

The amendment to §527.7 will delete language in subsections (a) and (f) to more closely follow the language found in §527.3.

Fiscal Note

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

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business and Micro-Business Impact Analysis

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

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on May 9, 2016.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have

an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

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

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

§527.7. Peer Review Oversight Board.

(a) The board shall retain the Peer Review Oversight Board (PROB) for the purpose of:

(1) monitoring sponsoring organizations to provide reasonable assurance that peer reviews are being conducted and reported in accordance with the Standards [~~for Performing and Reporting on Peer Reviews (the Standards)~~] promulgated by the AICPA Peer Review Board;

(2) reviewing the policies and procedures of sponsoring organization applicants as to their conformity with the peer review standards; and

(3) reporting to the board on the conclusions and recommendations reached as a result of performing the functions in paragraphs (1) and (2) of this subsection.

(b) Information concerning a specific firm or reviewer obtained by the PROB during oversight activities shall be confidential, and the firm's or reviewer's identity shall not be reported to the board. Reports submitted to the board will not contain information concerning specific firms or reviewers. Members of the PROB will be required to execute a confidentiality statement for the sponsoring organization which they oversee.

(c) The PROB shall consist of three members who are active licensed Texas CPAs. No member of the PROB shall be current members of the board or one of its committees, the TSCPA's Peer Review or Professional Conduct Committee, or the AICPA Professional Ethics Executive Committee (including subcommittees). The members should have extensive experience in accounting and auditing and currently be in the practice of public accountancy at the partner (or equivalent) level, and shall be members of the TSCPA or the AICPA. The member's firm must have received a report with a rating of pass or an unmodified opinion from its last peer review. Compensation of PROB members shall be set by the board.

(d) The PROB shall make an annual recommendation to the board as to the qualifications of an approved sponsoring organization to continue as an approved sponsoring organization on the basis of the results of the following procedures:

(1) Where the sponsoring organization is the AICPA/NPRC, state CPA societies other than Texas, fully involved in the administering AICPA Peer Review Program, or the PCAOB,

PROB shall review the published reports of those entities or successors, to determine that there is an acceptable level of oversight;

(2) Where the sponsoring organization is other than those listed in paragraph (1) of this subsection, PROB shall perform the following functions:

(A) At least one member of the PROB shall attend all meetings of each sponsoring organization's PRRC. Certain PRRC meetings may be conducted via telephone. In those instances, the PROB may join the conference call.

(B) During such visits, the PROB shall:

(i) meet with the organization's peer review committee during the committee's consideration of peer review documents;

(ii) evaluate the organization's procedures for administering the peer review program;

(iii) examine, on the basis of a random selection or other criteria adopted by PROB, a number of reviews performed by the organization to include, at a minimum, a review of the report on the peer review, the firm's response to the matters discussed, the sponsoring organization's FLOA outlining any additional corrective or monitoring procedures, and the required technical documentation maintained by the sponsoring organization on the selected reviews; and

(iv) expand the examination of peer review documents if significant deficiencies, problems, or inconsistencies are encountered during the analysis of the materials.

(e) In the evaluation of policies and procedures of sponsoring organization applicants, the PROB shall:

(1) examine the policies as drafted by the applicant to determine that they will provide reasonable assurance of conforming with the standards for peer reviews;

(2) evaluate the procedures proposed by the applicant to determine that:

(A) assigned reviewers are appropriately qualified to perform the review for the specific firm;

(B) reviewers are provided with appropriate materials;

(C) the applicant has provided for consulting with the reviewers on problems arising during the review and that specified occurrences requiring consultation are outlined;

(D) the applicant has provided for the assessment of the results of the review; and

(E) the applicant has provided for an independent report acceptance body that considers and accepts the reports of the review and requires corrective actions by firms with significant deficiencies;

(3) make recommendations to the board as to approval of the applicant as a sponsoring organization.

(f) Annually the PROB shall provide the board's Peer Review Committee with a report on the continued reliance of sponsoring organizations' peer reviews. The PROB report shall provide reasonable assurance that peer reviews are being conducted and reported on consistently and in accordance with the Standards [~~for Performing and Reporting on Peer Reviews (the Standards)~~] promulgated by the AICPA Peer Review Board. A summary of oversight visits shall be included with the annual report.

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

Filed with the Office of the Secretary of State on March 24, 2016.

TRD-201601413

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: May 8, 2016

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



22 TAC §527.10

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.10, concerning Peer Review Report Committee.

Background, Justification and Summary

The amendment to §527.10 deletes the word "accounting" in paragraph (1) and replaces it with "assurance," deletes the phrase "or an unmodified report" in the same paragraph, and deletes language concerning AICPA standards to more closely follow the language found in §527.3

Fiscal Note

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

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business and Micro-Business Impact Analysis

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

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on May 9, 2016.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small busi-

nesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

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

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

§527.10. Peer Review Report Committee.

A PRRC is comprised of CPAs practicing public accountancy and formed by a sponsoring organization for the purpose of accepting peer review reports submitted by firms on peer review engagements.

(1) Each member of a PRRC must be active in the practice of public accountancy at a supervisory level in the assurance [accounting] or auditing function while serving on the committee. The member's firm must be enrolled in an approved practice-monitoring program and have received a report with a rating of pass [or an unmodified report] on its most recently completed peer review. A majority of the committee members must satisfy the qualifications required of system peer review team captains as established and reported in the AICPA Standards [for Performing and Reporting on Peer Reviews].

(2) Each member of a PRRC must be approved for appointment by the governing body of the sponsoring organization.

(3) In determining the size of a PRRC, the requirement for broad industry experience, and the likelihood of some members needing to recuse themselves during the consideration of some reviews as a result of the members' close association to the firm or because they performed the review, shall be considered.

(4) No more than one PRRC member may be from the same firm.

(5) The PRRC members' terms shall be staggered to provide for continuity.

(6) A PRRC member may not concurrently serve as:

(A) a member of any state's board of accountancy; or

(B) a member of any state's CPA society's ethics committee.

(7) A PRRC member may not participate in any discussion or have any vote with respect to a reviewed firm when the committee member lacks independence as defined in §501.70 of this title (relating to Independence) or has a conflict of interest. Examples of conflicts of interest include, but are not limited to:

(A) the member's firm has performed the most recent peer review of the reviewed firm's accounting and auditing practice;

(B) the member served on the review team, which performed the current or the immediately preceding review of the enrolled firm; or

(C) the member believes he cannot be impartial or objective.

(8) Each PRRC member must comply with the confidentiality requirements of §901.161 of the Act (relating to Privilege for Certain Information). The sponsoring organization may annually re-

quire its PRRC members to sign a statement acknowledging their appointments and the responsibilities and obligations of their appointments.

(9) A PRRC decision to accept a report must be made by not fewer than three members who satisfy the above criteria.

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

Filed with the Office of the Secretary of State on March 24, 2016.

TRD-201601414

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: May 8, 2016

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



22 TAC §527.11

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.11, concerning Responsibilities of Peer Review Report Committee.

Background, Justification and Summary

The amendment to §527.11 deletes language in paragraph (1) to more closely follow the language found in §527.3 and deletes the word "insuring" and replaces it with "ensuring" in paragraph (7).

Fiscal Note

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

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business and Micro-Business Impact Analysis

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

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on May 9, 2016.

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

Statutory Authority

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

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

§527.11. *Responsibilities of Peer Review Report Committee.*

The PRRC shall:

(1) establish and administer the sponsoring organization's peer review program in accordance with the AICPA Standards [~~for Performing and Reporting on Peer Reviews~~];

(2) prescribe actions designed to assure correction of the deficiencies in the reviewed firm's system of quality control policies and procedures;

(3) monitor the prescribed remedial and corrective actions to determine compliance by the reviewed firm;

(4) resolve instances in which there is a lack of cooperation and agreement between the committee and review teams or reviewed firms in accordance with the sponsoring organization's adjudication process;

(5) act upon requests from firms for changes in the timetable of their reviews;

(6) appoint members to subcommittees and task forces as necessary to carry out its functions;

(7) establish and perform procedures for ensuring [~~insuring~~] that reviews are performed and reported on in accordance with the AICPA Standards for Performing and Reporting on Peer Reviews;

(8) establish a report acceptance process, which facilitates the exchange of viewpoints among committee members;

(9) communicate to the governing body of the sponsoring organization on a recurring basis:

(A) problems experienced by the enrolled firms in their systems of quality control as noted in the peer reviews conducted by the sponsoring organization;

(B) problems experienced in the implementation of the peer review program; and

(C) a summary of the historical results of the peer review program.

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

Filed with the Office of the Secretary of State on March 24, 2016.

TRD-201601415

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: May 8, 2016

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

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 200. REPORTING OF HEALTH CARE-ASSOCIATED INFECTIONS AND PREVENTABLE ADVERSE EVENTS

SUBCHAPTER B. HEALTHCARE SAFETY ADVISORY COMMITTEE

25 TAC §200.40

The Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (department), proposes new §200.40, concerning the Healthcare Safety Advisory Committee.

BACKGROUND AND PURPOSE

Senate Bill (SB) 200 and SB 277, 84th Legislature, Regular Session, 2015, directed the Executive Commissioner of the HHSC to establish and maintain advisory committees to address major health and human services issues and to adopt rules to govern the advisory committee's purpose, tasks, reporting requirements, and date of abolition. As part of health and human services (HHS) system-wide inventory and analysis, the Healthcare Safety Advisory Committee (formerly known as the Health Care-associated Infections and Preventable Adverse Events (HAI/PAE) Advisory Panel) has been identified for rulemaking.

SB 277 amended the Health and Safety Code, Chapter 98, Reporting of Health Care-associated Infections (HAI) and Preventable Adverse Events (PAE), by removing the HAI/PAE Advisory Panel from the statute. The advisory panel serves a critical role to obtain stakeholder feedback on programmatic activities and initiatives. Most recently, the panel has participated in guidance document creation contributing to the clarity of reporting for PAEs which kept the initiative on schedule for implementation. The new rule describes the operations of the Healthcare Safety Advisory Committee including the purpose, tasks, reporting requirements, membership composition, and meeting schedules. This panel has been in existence with regular meetings since 2005.

SECTION-BY-SECTION SUMMARY

New §200.40 establishes the Healthcare Safety Advisory Committee. The new rule (1) identifies the statutory authority of the panel; (2) outlines the committee's purpose; (3) describes tasks; (4) outlines the reporting requirements; (5) gives date of aboli-

tion; (6) establishes membership composition and qualifications; and (7) establishes meeting schedules.

FISCAL NOTE

Ms. Janna Zumbrun, Assistant Commissioner, Division for Disease Control and Prevention Services, has determined that for each year for the first five years that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Zumbrun has also determined that there will not be an adverse economic impact on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL GOVERNMENT

There are no anticipated costs to persons who are required to comply with the section as proposed. There is no fiscal impact to local employment.

PUBLIC BENEFIT

In addition, Ms. Zumbrun has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section is for ongoing stakeholder opinion and public comments on activities related to the Emerging and Acute Infectious Disease Branch Healthcare Safety Program activities.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments or questions on the proposal may be submitted to Vickie Gillespie, Preventable Adverse Events Clinical Analyst, Healthcare Safety Program, Division of Disease Control and Prevention Services, Department of State Health Services, Mail Code 1960, P.O. Box 149347, Austin, Texas 78714-9347, (512) 776-6878 or Vickie.Gillespie@dshs.state.tx.us. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rule has been reviewed by legal counsel and found to be within the states agencies' legal authority to adopt.

STATUTORY AUTHORITY

This new rule is authorized by the Government Code, §531.012, which requires the department to adopt rules necessary to establish the Advisory Committee, and by Chapter 2110 in general; and Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The new rule affects Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

§200.40. Healthcare Safety Advisory Committee.

(a) The committee. The Healthcare Safety Advisory Committee (committee) is appointed under and governed by this section.

(b) Applicable law. The committee is subject to Texas Government Code, Chapter 2110.

(c) Purpose. The purpose of the committee is to provide a forum to obtain stakeholder input on program initiatives and proposals for consideration by the Emerging and Acute Infectious Disease Branch (EAIDB) of the Texas Department of State Health Services.

(d) Tasks.

(1) The committee provides stakeholder feedback related to program initiatives.

(2) The committee participates in workgroups to develop guidance related to program activities as requested by EAIDB.

(e) Reports to the department.

(1) The committee files an annual written report with the Executive Commissioner.

(A) The report includes:

(i) the meeting dates of the committee;

(ii) the member attendance records;

(iii) a brief description of actions taken by the committee;

(iv) committee accomplishments;

(v) the status of any committee recommended rules for consideration by the department and the commission;

(vi) anticipated committee activities of the committee; and

(vii) any amendments to this section requested by the committee.

(viii) identifies the costs related to the committee, including the cost of agency staff time spent in support of the committee's activities and the source of funds used to support the committee's activities.

(B) The report covers the meetings and activities in the immediate preceding calendar year and is filed with the HHSC Executive Commissioner each February of the following calendar year.

(2) The committee files an annual written report with the Texas Legislature regarding any policy recommendations made to the HHSC Executive Commissioner.

(f) Date of abolition. The committee is abolished September 1, 2020.

(g) Composition.

(1) The committee is composed of 13 (voting and non-voting) members appointed by the Executive Commissioner.

(2) The composition of the committee includes:

(A) two infection prevention and control professionals who:

(i) are certified by the Certification Board of Infection Control and Epidemiology; and

(ii) are practicing in a healthcare facility in this state;

(B) two healthcare safety professionals who:

(i) are practicing in a healthcare facility in this state;

and

(ii) are employed as professionals in quality assessment and performance improvement;

(C) three board-certified physicians who:

(i) are licensed to practice medicine in this state under Texas Occupations Code, Chapter 155;

(ii) have active medical staff privileges at a healthcare facility in this state; and

(iii) have demonstrated expertise in the area(s) of quality assessment and performance improvement, healthcare safety, health care epidemiology, antimicrobial resistance activities, or infection control in health care facilities;

(D) two healthcare facility administrators;

(E) one licensed pharmacist in this state who:

(i) has experience in systems to reduce medication errors and in antibiotic stewardship activities; and

(ii) is practicing in a healthcare facility in this state;

(F) one nonvoting member who is a department employee representing the licensing of hospitals or ambulatory surgical centers; and

(G) two members who represent the public as consumers.

(3) Geographic representation will be considered among equally qualified appointees for each committee position.

(h) Terms of office. Except as may be necessary to stagger terms, the term of office of each member is two years.

(1) Members are appointed so that the terms of members expire on December 31st of each even-numbered year.

(2) If a vacancy occurs, a person is appointed to serve the unexpired portion of that term.

(i) Officers. The committee selects a presiding officer and an assistant presiding officer from its members.

(1) The presiding officer and assistant presiding officer serve until December 31st of each even-numbered year. Both the

presiding officer and the assistant presiding officer may retain office until his or her replacement is appointed.

(2) The presiding officer:

(A) presides at all committee meetings in which he or she is in attendance;

(B) calls meetings in accordance with this section;

(C) appoints subcommittees of the committee as necessary;

(D) causes proper reports to be made to the Executive Commissioner; and

(E) may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer performs the duties of the presiding officer in case of the absence or disability of the presiding officer. If the office of presiding officer becomes vacant, the assistant presiding officer serves as presiding officer until the committee selects a new presiding officer.

(4) A member shall serve no more than two consecutive terms as presiding officer or assistant presiding officer.

(5) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(i) Meetings. The committee meets as necessary as determined by the department, up to four times per year, to conduct business.

(1) The committee meets at the call of the presiding officer.

(2) Meeting arrangements are made by department staff.

(3) The committee is not a "governmental body" as defined in the Open Meetings Act, Texas Government Code, Chapter 551. Meetings may be conducted in person, through teleconference call, or by means of other technology.

(4) The committee provides stakeholder feedback only. The committee has no authority to conduct "official business" on the part of the department.

(5) The agenda for each committee meeting includes an opportunity for new business or for any member to address the committee on matters relating to committee business.

(6) The agenda for each committee meeting also includes an item entitled public comment under which any person is allowed to address the committee on matters relating to business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(k) Attendance. Members attend committee meetings as scheduled.

(1) A member notifies the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member:

(A) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability;

(B) is absent from more than half of the committee meetings during a calendar year; or

(C) is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when grounds for removal of a member exists per paragraph (2) of this subsection.

(l) Staff. Staff support for the committee is provided by the department.

(m) Procedures. Roberts Rules of Order are the basis of parliamentary decisions, except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present, once quorum is established.

(2) Each member has one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee makes decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting are taken by department staff and approved by the committee at the next scheduled meeting.

(n) Statement by members.

(1) The commission, the department, and the committee are not bound in any way by any statement, recommendation, or action on the part of any committee member, except when a statement or action is in pursuit of specific instructions from the commission, the department, or the committee.

(2) The committee and its members may not participate in legislative activity in the name of the commission, the department, or the committee except with approval through the commission's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(3) A committee member may not accept or solicit any benefit that might reasonably tend to influence the member in the discharge of the member's official duties.

(4) A committee member may not disclose confidential information acquired through his or her committee membership.

(5) A committee member may not knowingly solicit, accept, or agree to accept any benefit for having exercised the member's official powers or duties in favor of another person.

(6) A committee member who has a personal or private interest in a matter pending before the committee must publicly disclose the fact in a committee meeting and may not vote or otherwise participate in the matter. The phrase "personal or private interest" means the committee member has a direct pecuniary interest in the matter, but does not include the committee member's engagement in a profession, trade, or occupation when the member's interest is the same as all others similarly engaged in the profession, trade, or occupation.

(o) Reimbursement for expenses. In accordance with the requirements set forth in Texas Government Code, Chapter 2110, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

(1) Only travel expenses for the two consumer representatives are reimbursed for each meeting attended.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) Each member who is to be reimbursed for expenses submits to department staff the member's receipts for expenses and any required official forms not later than 14 days after each committee meeting.

(4) Requests for reimbursement of expenses are made on official state vouchers prepared by department staff.

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

Filed with the Office of the Secretary of State on March 28, 2016.

TRD-201601420

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: May 8, 2016

For further information, please call: (512) 776-6972



CHAPTER 411. STATE MENTAL HEALTH AUTHORITY RESPONSIBILITIES

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §§411.1 - 411.4, 411.7, 411.12, 411.20, and 411.21, concerning Advisory Committees, and proposes new §411.1 and §411.3, concerning the Joint Committee on Access and Forensic Services.

BACKGROUND AND PURPOSE

The proposed repeals of §§411.1 - 411.4, 411.7, 411.12, 411.20, and 411.21 will comply with Senate Bill (SB) 277, 84th Legislature, Regular Session, 2015, which amended Health and Safety Code, §571.027, by abolishing the Inpatient Mental Health Services Advisory Committee in §411.12. The committee was one of several advisory committees recommended for abolishment by the Sunset Advisory Commission during the 2014 review of the department. The committee is inactive and has no active members. It was statutorily directed to provide the department with advice on issues and policies concerning mental health services in private mental hospitals and psychiatric units of general hospitals, coordination and communication regarding interpretation and enforcement of policies, and training for surveyors or investigators.

In addition, the repeals are necessary to comply with SB 200, 84th Legislature, Regular Session, 2015, which amended Health and Safety Code, §531.012, by requiring the Executive Commissioner to establish and maintain advisory committees to consider issues and solicit public input across major areas of the health and human services system, including behavioral health. While not mentioned in either of these statutes, it was determined the Mental Health Planning and Advisory Council in §411.7, currently referred to as the Council for Advising and Planning (CAP) for the Prevention and Treatment of Mental and Substance Use Disorders will be reconstituted as a subcommittee of the Behavioral Health Advisory Committee to meet requirements for a mental health planning council under federal law in 42 U.S.C. §300x-3.

New §411.1 and §411.3 are necessary to comply with SB 1507, 84th Legislature, Regular Session, 2015, which added Health and Safety Code, §532.0131 and §533.051(c). The new legislation requires the department to establish rules that govern both a forensic work group tasked with making recommendations relating to the effective coordination of forensic services and an advisory panel tasked with establishing the allocation methodology of outpatient mental health services and beds. It was determined these two committees will be combined into one joint committee.

SECTION-BY-SECTION SUMMARY

Section 411.1 is proposed to be repealed in order to remove references to outdated terminology for the "Texas Department of Mental Health and Mental Retardation" and to reorganize the rule text. References to the "Department of State Health Services" and Texas Government Code, Chapter 2110, will be included in new §411.1 and §411.3.

Section 411.2 is proposed to be repealed in order to remove references to outdated terminology for "Texas Department of Mental Health and Mental Retardation."

Section 411.3 is proposed to be repealed concerning outdated definitions. New definitions are included in the new §411.1.

Section 411.4 is proposed to be repealed concerning the outdated advisory committee requirements and new requirements are included in new §411.3.

Section 411.7 is proposed to be repealed which requires this committee be abolished on January 1, 2012, unless abolished on an earlier date or reauthorized.

Section 411.12 is proposed to be repealed as a result of the abolished Inpatient Mental Health Services Advisory Committee.

Section 411.20 is proposed to be repealed as the statutory authority will be revised and included in the new §411.3.

Section 411.21 is proposed to be repealed to remove the outdated distribution of the advisory committees and will not be included in the new proposed rules.

New §411.1 contains definitions for the subchapter and new §411.3 sets forth the statutory authority, applicability, purpose, tasks, reporting requirements, abolition, membership, quorum and presiding officers of the Joint Committee on Access and Forensic Services.

The title of Subchapter A has been revised to reflect "Joint Committee on Access and Forensic Services" instead of "Advisory Committees."

FISCAL NOTE

Ms. Lauren Lacefield Lewis has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to the state or local governments as a result of enforcing or administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Lacefield Lewis has determined that there will not be an effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections as proposed.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Lacefield Lewis has also determined that for each year of the first five years that the sections will be in effect, the public will benefit as a result of adoption of rules for the new Joint Committee on Access and Forensic Services because consistent rules will ensure that policies and decisions made by the committee are governed by accepted standards, accessible to the public and informed by committee members representing a diverse group of stakeholder and experts. The public benefit anticipated from enforcing or administering the repealed sections is to remove rules from the department's rules database that are moving to another agency.

REGULATORY ANALYSIS

The department has determined that this is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed repeals and proposed new rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Carissa Dougherty, Department of State Health Services, P.O. Box 149347, Mail Code 2018, Austin, Texas 78714-9347, (512) 206-5347, or by email to Carissa.Dougherty@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER A. ADVISORY COMMITTEES

25 TAC §§411.1 - 411.4, 411.7, 411.12, 411.20, 411.21

STATUTORY AUTHORITY

The repeals are authorized by Health and Safety Code, §531.0131 and §533.051(c), which define membership requirements and prescribe duties of the Joint Committee on Access and Forensic Services; Health and Safety Code, §533.0515, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules as necessary to implement its provisions; and Government Code, §532.012, which authorizes the Executive Commissioner to adopt rules for advisory committees. The rules are authorized by Government Code, §531.0055 and Health and Safety Code, §1001.075,

which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The repeals affect Government Code, Chapters 531, 532 and 533; and Health and Safety Code, Chapter 1001.

§411.1. Purpose.

§411.2. Applications.

§411.3. Definitions.

§411.4. Advisory Committee Requirements.

§411.7. Mental Health Planning and Advisory Council.

§411.12. Inpatient Mental Health Services Advisory Committee.

§411.20. References.

§411.21. Distribution.

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

Filed with the Office of the Secretary of State on March 28, 2016.

TRD-201601435

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: May 8, 2016

For further information, please call: (512) 776-6972



SUBCHAPTER A. JOINT COMMITTEE ON ACCESS AND FORENSIC SERVICES

25 TAC §411.1, §411.3

The new rules are authorized by Health and Safety Code, §531.0131 and §533.051(c), which define membership requirements and prescribe duties of the Joint Committee on Access and Forensic Services; Health and Safety Code, §533.0515, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules as necessary to implement its provisions; and Government Code, §532.012, which authorizes the Executive Commissioner to adopt rules for advisory committees. The rules are authorized by Government Code, §531.0055 and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The new rules affect Government Code, Chapters 531, 532 and 533; and Health and Safety Code, Chapter 1001.

§411.1. Definitions.

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

(1) DSHS--The Texas Department of State Health Services.

(2) Executive Commissioner--The HHSC Executive Commissioner or his or her designee.

(3) HHSC--The Texas Health and Human Services Commission or its designee.

§411.3. Joint Committee on Access and Forensic Services.

(a) Statutory authority. This section is authorized by:

(1) Texas Health and Safety Code, §531.0131 and §533.051(c), which define membership requirements and prescribe duties of the Joint Committee on Access and Forensic Services (JCAFS);

(2) Texas Health and Safety Code, §533.0515, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules as necessary to implement its provisions; and

(3) Texas Government Code, §531.012, which authorizes the Executive Commissioner to adopt rules for advisory committees.

(b) Applicability. Texas Government Code, Chapter 2110 and Texas Government Code, Chapter 551, apply to the JCAFS.

(c) Purpose. The purposes of the JCAFS are:

(1) to make recommendations for a comprehensive plan for effective coordination of forensic services;

(2) to make recommendations and monitor implementation of updates to a bed day allocation methodology; and

(3) to make recommendations and monitor implementation of an utilization review protocol for state funded beds in hospitals and other inpatient mental health facilities.

(d) Tasks. The JCAFS considers and makes recommendations to the Executive Commissioner consistent with the committee's purpose as stated in subsection (c) of this section.

(e) Reporting requirements.

(1) The JCAFS files an annual written report with the Executive Commissioner by December 1st of each year. The report includes:

(A) the committee's meeting dates for the previous fiscal year;

(B) the activities it has completed to achieve the defined purpose; and

(C) the committee's recommendations.

(2) The JCAFS files an annual written report with the Texas Legislature by December 1st of each year that includes any policy recommendations made to the Executive Commissioner.

(3) In accordance with Texas Health and Safety Code, §533.0515, the committee sends a proposal for an updated bed day allocation methodology and bed day utilization review protocol to the Executive Commissioner no later than December 1st of each even-numbered year.

(4) In accordance with Texas Health and Safety Code, §532.0131, the committee submits a report with recommendations concerning the creation of a comprehensive plan for coordination of forensic services to the lieutenant governor, the speaker of the house of representatives, and the standing committees of the senate and the house of representatives with primary jurisdiction over forensic services no later than July 1, 2016.

(f) Abolition. Unless reauthorized, the committee is abolished on November 1, 2019.

(g) Membership.

(1) Number of members. The JCAFS is composed of 24 members nominated by the designating organization and appointed by the Executive Commissioner. The membership includes:

(A) two representatives designated by DSHS, including a superintendent of a state hospital with a maximum security forensic unit;

(B) two representatives designated by the Texas Department of Criminal Justice, including a representative of the Texas Correctional Office on Offenders with Medical or Mental Impairments;

(C) one representative designated by the Texas Juvenile Justice Department;

(D) one representative from a State Supported Living Center that provides forensic services designated by the Texas Department of Aging and Disability Services or its successor agency;

(E) one representative designated by the Texas Association of Counties;

(F) two representatives designated by the Texas Council of Community Centers, including one representative of an urban local service area and one representative of a rural local service area;

(G) two representatives designated by the County Judges and Commissioners Association of Texas, including one representative who is the presiding judge of a court with jurisdiction over mental health matters;

(H) one representative designated by the Sheriffs' Association of Texas;

(I) two representatives designated by the Texas Municipal League, including one representative who is a municipal law enforcement official;

(J) one representative designated by the Texas Conference of Urban Counties;

(K) two representatives designated by the Texas Hospital Association, including one representative who is a physician;

(L) one representative designated by the Texas Catalyst for Empowerment;

(M) one representative of Disability Rights Texas;

(N) one representative designated by the Texas District and County Attorneys Association; and

(O) four representatives designated by the DSHS Council for Advising and Planning for the Prevention and Treatment of Mental and Substance Use Disorders (CAP):

(i) including the chair of the council, one representative of the council's members who is a consumer of or advocate for mental health services, one representative of the council's members who is a consumer of or advocate for substance abuse treatment, and one representative of the council's members who is a family member of or advocate for persons with mental health and substance abuse disorders;

(ii) at least one of the designated individuals represents consumers involved with forensic services; and

(iii) with the dissolution of the CAP, responsibility for designating representatives transfers to the HHSC Behavioral Health Advisory Committee.

(2) The DSHS Forensic Director serves as a non-voting ex officio member of the JCAFS.

(3) Each member serves until a replacement is nominated by the designating organization and appointed by the Executive Commissioner.

(h) Quorum. A majority of the voting members of the JCAFS constitutes a quorum.

(i) Presiding officers.

(1) The JCAFS selects from among its members a presiding officer.

(2) Unless re-elected, the term of the presiding officer is one year. A member serves no more than two consecutive terms as presiding officer.

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

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Lisa Hernandez

General Counsel

Department of State Health Services

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