

ADOPTED RULES

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

TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER A. GENERAL RULES

7 TAC §91.101

The Credit Union Commission (the Commission) adopts the amendments to Texas Administrative Code, Title 7, Chapter 91, Subchapter A, §91.101, concerning definitions and interpretations, with changes to the adopted text as published in the July 26, 2019, issue of the *Texas Register* (44 TexReg 3715). The rule will be republished.

The amended rule defines the term "consolidated CUSO" utilized in §91.401 and addresses minor grammar errors.

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

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

§91.101. *Definitions and Interpretations.*

(a) Words and terms used in this chapter that are defined in Finance Code §121.002, have the same meanings as defined in the Finance Code. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--the Texas Credit Union Act (Texas Finance Code, Subtitle D).

(2) Allowance for loan and lease losses (ALLL)--a general valuation allowance that has been established through charges against earnings to absorb losses on loans and lease financing receivables. An ALLL excludes the regular reserve and special reserves.

(3) Applicant--an individual or credit union that has submitted an application to the commissioner.

(4) Application--a written request filed by an applicant with the department seeking approval to engage in various credit union activities, transactions, and operations or to obtain other relief for which the commission is authorized by the act to issue a final decision or order subject to judicial review.

(5) Appraisal--a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of a specifically described asset as of a specific date,

supported by the presentation and analysis of relevant market information.

(6) Automated teller machine (ATM)--an automated, unstaffed credit union facility owned by or operated exclusively for the credit union at which deposits are received, cash dispensed, or money lent.

(7) Community of interest--a unifying factor among persons that by virtue of its existence, facilitates the successful organization of a new credit union or promotes economic viability of an existing credit union. The types of community of interest currently recognized are:

(A) Occupational--based on an employment relationship that may be established by:

(i) employment (or a long-term contractual relationship equivalent to employment) by a single employer, affiliated employers or employers under common ownership with at least a 10% ownership interest;

(ii) employment or attendance at a school; or

(iii) employment in the same trade, industry or profession (TIP) with a close nexus and narrow commonality of interest, which is geographically limited.

(B) Associational--based on groups consisting primarily of natural persons whose members participate in activities developing common loyalties, mutual benefits, or mutual interests. In determining whether a group has an associational community of interest, the commissioner shall consider the totality of the circumstances, which include:

(i) whether the members pay dues;

(ii) whether the members participate in furtherance of the goals of the association;

(iii) whether the members have voting rights;

(iv) whether there is a membership list;

(v) whether the association sponsors activities;

(vi) what the association's membership eligibility requirements are; and

(vii) the frequency of meetings. Associations formed primarily to qualify for credit union membership and associations based on client or customer relationships, do not have a sufficient associational community of interest.

(C) Geographic--based on a clearly defined and specific geographic area where persons have common interests and/or interact. More than one credit union may share the same geographic community of interest. There are currently four types of affinity on which a geographic community of interest can be based: persons, who:

- (i) live in;
- (ii) worship in;
- (iii) attend school in; or
- (iv) work in that community. The geographic community of interest requirements are met if the area to be served is in a recognized single political jurisdiction, e.g., a city or a county, or a portion thereof.

(D) Other--The commissioner may authorize other types of community of interest, if the commissioner determines that either a credit union or foreign credit union has sufficiently demonstrated that a proposed factor creates an identifiable affinity among the persons within the proposed group. Such a factor shall be well-defined, have a geographic definition, and may not circumvent any limitation or restriction imposed on one of the other enumerated types.

(8) Credit union service organization (CUSO)--an organization authorized by §91.801 of this title (relating to Investments in Credit Union Service Organizations). A consolidated CUSO is one where control or ownership by a credit union requires consolidation of the credit union and CUSO financial statements to comply with Generally Accepted Accounting Principles.

(9) Day--whenever periods of time are specified in this title in days, calendar days are intended. When the day, or the last day fixed by statute or under this title for taking any action falls on Saturday, Sunday, or a state holiday, the action may be taken on the next succeeding day which is not a Saturday, Sunday, or a state holiday.

(10) Department newsletter--the monthly publication that serves as an official notice of all applications, and by which procedures to protest applications are described.

(11) Field of membership (FOM)--refers to the totality of persons a credit union may accept as members. The FOM may consist of one group, several groups with a related community of interest, or several unrelated groups with each having its own community of interest.

(12) Finance Code or Texas Finance Code--the codification of the Texas statutes governing financial institutions, financial businesses, and related financial services, including the regulations and supervision of credit unions.

(13) Imminent danger of insolvency--a circumstance or condition in which a credit union is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even if the value of its assets exceeds its liabilities; or the credit union has a positive net worth ratio equal to two percent or less of its assets.

(14) Improved residential property--residential real estate containing on-site, offsite or other improvements sufficient to make the property ready for primarily residential construction, and real estate in the process of being improved by a building or buildings to be constructed or in the process of construction for primarily residential use.

(15) Interactive teller machine (ITM)--a video-based interactive technology which allows members to conduct transactions and credit union services driven by a centrally based teller, in a real time video or audio interaction.

(16) Indirect financing--a program in which a credit union makes the credit decision in a transaction where the credit is extended by the vendor and assigned to the credit union or a loan transaction that generally involves substantial participation in and origination of the transaction by a vendor.

(17) Loan and extension of credit--a direct or indirect advance of funds to or on behalf of a member based on an obligation of the member to repay the funds or repayable from the application of the specific property pledged by or on behalf of the member. The terminology also includes the purchase of a member's loan or other obligation, a lease financing transaction, a credit sale, a line of credit or loan commitment under which the credit union is contractually obligated to advance funds to or on behalf of a member, an advance of funds to honor a check or share draft drawn on the credit union by a member, or any other indebtedness not classified as an investment security.

(18) Loan-to-value ratio--the aggregate amount of all sums borrowed and secured by the collateral, including outstanding balances plus any unfunded commitment or line of credit from another lender that is senior to the credit union's lien divided by the current value of the collateral.

(19) Manufactured home--a HUD-code manufactured home as defined by the Texas Manufactured Housing Standards Act. The terminology may also include a mobile home, house trailer, or similar recreational vehicle if the unit will be used as the member's residence and the loan is secured by a first lien on the unit, and the unit meets the requirements for the home mortgage interest deduction under the Internal Revenue Code (26 U.S.C. Section 163(a), (h)(2)(D)).

(20) Market Value--the most probable price which an asset should bring in a competitive and open market under an arm's-length sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of ownership from seller to buyer where:

- (A) buyer and seller are typically motivated;
- (B) both parties are well informed or well advised, and acting in their own best interests;
- (C) a reasonable time is allowed for exposure in the open market;
- (D) payment is made in cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- (E) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(21) Metropolitan Statistical Area (MSA)--a geographic area as defined by the director of the U.S. Office of Management and Budget.

(22) Mobile office--a branch office that does not have a single, permanent site, including a vehicle that travels to various public locations to enable members to conduct their credit union business.

(23) Office--includes any service facility or place of business established by a credit union at which deposits are received, checks or share drafts paid, or money lent. This definition includes a credit union owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, a credit union owned ATM, or a credit union owned ITM or other electronic facility that meets, at a minimum, these requirements; however, it does not include the credit union's Internet website. This definition also includes a shared branch or a shared branch network if either:

- (A) the credit union has an ownership interest in the service facility either directly or through a CUSO or similar organization; or
- (B) the service facility is local to the credit union and the credit union is an authorized participant in the service center.

(24) Overlap--the situation which exists when a group of persons is eligible for membership in two or more state, foreign, or federal credit unions doing business in this state. Notwithstanding this provision, no overlap exists if eligibility for credit union membership results solely from a family relationship.

(25) Pecuniary interest--the opportunity, directly or indirectly, to make money on or share in any profit or benefit derived from a transaction.

(26) Person--an individual, partnership, corporation, association, government, governmental subdivision or agency, business trust, estate, trust, or any other public or private entity.

(27) Principal office--the home office of a credit union.

(28) Protestant--a credit union that opposes or objects to the relief requested by an applicant.

(29) Real estate or real property--an identified parcel or tract of land. The term includes improvements, easements, rights of way, undivided or future interest and similar rights in a tract of land, but does not include mineral rights, timber rights, growing crops, water rights and similar interests severable from the land when the transaction does not involve the associated parcel or tract of land.

(30) Remote service facility--an automated, unstaffed credit union facility owned or operated by, or operated for, the credit union, such as an automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility, at which deposits are received, cash dispensed, or money lent.

(31) Reserves--allocations of retained earnings including regular and special reserves, except for any allowances for loan, lease or investment losses.

(32) Resident of this state--a person physically located in, living in or employed in the state of Texas.

(33) Respondent--a credit union or other person against whom a disciplinary proceeding is directed by the department.

(34) Secured credit--a loan made or extension of credit given upon an assignment of an interest in collateral pursuant to applicable state laws so as to make the enforcement or promise more certain than the mere personal obligation of the debtor or promisor. Any assignment may include an interest in personal property or real property or a combination thereof.

(35) Shared service center--a facility which is connected electronically with two or more credit unions so as to permit the facility, through personnel at the facility and the electronic connection, to provide a credit union member at the facility the same credit union services that the credit union member could lawfully obtain at the principal office of the member's credit union.

(36) TAC--an acronym for the Texas Administrative Code, a compilation of all state agency rules in Texas.

(37) Title or 7 TAC--Title 7, Part VI of the Texas Administrative Code Banking and Securities, which contains all of the department's rules.

(38) Underserved area--a geographic area, which could be described as one or more contiguous metropolitan statistical areas (MSA) or one or more contiguous political subdivisions, including counties, cities, and towns, that satisfy any one of the following criteria:

(A) a majority of the residents earn less than 80 percent of the average for all wage earners as established by the U.S. Bureau of Labor Statistics;

(B) the annual household income for a majority of the residents falls at or below 80 percent of the median household income for the State of Texas, or the nation, whichever is higher; or

(C) the commission makes a determination that the lack of available or adequate financial services has adversely affected economic development within the specified area.

(39) Uninsured membership share--funds paid into a credit union by a member that constitute uninsured capital under conditions established by the credit union and agreed to by the member including possible reduction under §122.105 of the act, risk of loss through operations, or other forfeiture. Such funds shall be considered an interest in the capital of the credit union upon liquidation, merger, or conversion.

(40) Unsecured credit--a loan or extension of credit based solely upon the general credit financial standing of the borrower. The term shall include loans or other extensions of credit supported by the signature of a co-maker, guarantor, or endorser.

(b) The same rules of construction that apply to interpretation of Texas statutes and codes, the definitions in the Act and in Government Code §2001.003, and the definitions in subsection (a) of this section govern the interpretation of this title. If any section of this title is found to conflict with an applicable and controlling provision of other state or federal law, the section involved shall be void to the extent of the conflict without affecting the validity of the rest of this title.

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

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John J. Kolhoff

Commissioner

Credit Union Department

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



SUBCHAPTER H. INVESTMENTS

7 TAC §91.801

The Credit Union Commission (the Commission) adopts the amendments to Texas Administrative Code, Title 7, Chapter 91, Subchapter H, §91.801, concerning investments, without changes to the proposed text as published in the July 26, 2019, issue of the *Texas Register* (44 TexReg 3718). The amendments will not be republished.

The amended rule recognizes parity with federal regulations by specifically authorizing credit union ability to invest in CUSOs providing property management services.

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

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

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

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7 TAC §91.803

The Credit Union Commission (the Commission) adopts the amendments to Texas Administrative Code, Title 7, Chapter 91, Subchapter H, §91.803, concerning investment limits and prohibitions, with changes to the proposed text as published in the July 26, 2019, issue of the *Texas Register* (44 TexReg 3721). The amendments will be republished.

The amended rule clarifies the limits found in §91.803 apply only to investments as outlined by the Subchapter heading and to provide minor grammar edits.

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

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

§91.803. *Investment Limits and Prohibitions.*

(a) **Limitations.** Except for deposits placed in a Federal Reserve Bank, a credit union may invest no more than 50% of its net worth with any single obligor or related obligors. This limitation does not apply to the extent that the investment is insured or guaranteed by the United States government, or an agency, sponsored enterprise, corporation, or instrumentality, of the United States government, or to any trust or trusts established for investing, directly or collectively, in such securities, obligations, or instruments. For the purposes of this section, obligor is defined as an issuer, trust, or originator of an investment, including the seller of a loan participation investment.

(b) **Designated Depository.** As a single exception to subsection (a) of this section, a credit union's board of directors may establish the maximum aggregate deposit limit for a single financial institution approved by the board as the credit union's designated depository. This deposit limit shall be a percentage of net worth and must be based on the credit union's liquidity trends and funding needs as documented by its asset/liability management policy. This authority is contingent upon the credit union appropriately documenting its due diligence to demonstrate that the investments in this designated depository do not pose a safety and soundness concern. The credit union's board of directors shall review and approve at least annually the maximum aggregate deposit limit for its designated depository. The review shall include a current due diligence analysis of the financial institution.

(c) **Prohibited Activities.**

(1) **Definitions.**

(A) **Adjusted trading--**selling an investment to a counterparty at a price above its current fair value and simultaneously purchasing or committing to purchase from the counterparty another investment at a price above its current fair value.

(B) **Collateralized mortgage obligation (CMO)--**a multi-class bond issue collateralized by mortgages or mortgage-backed securities.

(C) **Commercial mortgage related security--**a mortgage related security except that it is collateralized entirely by commercial real estate, such as a warehouse or office building, or a multi-family dwelling consisting of more than four units.

(D) **Fair value--**the price at which a security can be bought or sold in a current, arm's length transaction between willing parties, other than in a forced or liquidation sale.

(E) **Real estate mortgage investment conduit (REMIC)--**a nontaxable entity formed for the sole purpose of holding a fixed pool of mortgages secured by an interest in real property and issuing multiple classes of interests in the underlying mortgages.

(F) **Residual interest--**the remainder cash flows from a CMO/REMIC, or other mortgage-backed security transaction, after payments due bondholders and trust administrative expenses have been satisfied.

(G) **Short sale--**the sale of a security not owned by the seller.

(H) **Stripped mortgage-backed security--**a security that represents either the principal-only or the interest-only portion of the cash flows of an underlying pool of mortgages or mortgage-backed securities.

(I) **Zero coupon investment--**an investment that makes no periodic interest payments but instead is sold at a discount from its face value. The holder of a zero coupon investment realizes the rate of return through the gradual appreciation of the investment, which is redeemed at face value on a specified maturity date.

(2) A credit union may not:

(A) Use financial derivatives for replication, or for any purposes other than hedging;

(B) Engage in adjusted trading or short sales;

(C) Purchase stripped mortgage backed securities;

(D) Purchase residual interests in CMOs/REMICs, or other structured mortgage backed securities;

(E) Purchase mortgage servicing rights as an investment but may retain mortgage servicing rights on a loan originated by the credit union and sold on the secondary market;

(F) Purchase commercial mortgage related securities of an issuer other than a U.S. Government sponsored enterprise;

(G) Purchase any security that has the capability of becoming a first credit loss piece which supports another more senior security;

(H) Purchase a zero coupon investment with a maturity date that is more than 10 years from the settlement date;

(I) Purchase investments whereby the underlying collateral consists of foreign receivables or foreign deposits;

(J) Purchase securities used as collateral by a safekeeping concern;

(K) Purchase exchangeable mortgage backed securities, unless they are fully compliant with the provisions outlined in Part 703 of the National Credit Union Administration Rules and Regulations; or

(L) Purchase securities convertible into stock at the option of the issuer.

(d) Investment pilot program.

(1) The commissioner may authorize a limited number of credit unions to engage in other types of investment activities under an investment pilot program. A credit union wishing to participate in an investment pilot program shall submit a request that addresses the following items:

(A) Board policies approving the activities and establishing limits on them;

(B) A complete description of the activities, with specific examples of how the credit union will conduct them and how they will benefit the credit union;

(C) A demonstration of how the activities will affect the credit union's financial performance, risk profile, and asset-liability management strategies;

(D) Examples of reports the credit union will generate to monitor the activities;

(E) A projection of the associated costs of the activities, including personnel, computer, audit, etc.;

(F) A description of the internal systems to measure, monitor, and report the activities, and the qualifications of the staff and/or official(s) responsible for implementing and overseeing the activities; and

(G) The internal control procedures that will be implemented, including audit requirements.

(2) In connection with a request to participate in an investment pilot program, the commissioner will consider the general nature and functions of credit unions, as well as the specific financial condition and management of the applicant credit union, as revealed in the request, examinations, or such other information as may be available to the commissioner. The commissioner may approve the request, approve the request conditionally, approve it in modified form, or deny it in whole or in part. A decision by the commissioner concerning participation in an investment pilot program is not appealable.

(3) The commissioner may find that an investment pilot program previously authorized is no longer a safe and prudent practice for credit unions generally to engage in, that it has become inconsistent with applicable state or federal law, or that it has ceased to be a safe and prudent practice for one or more credit unions in light of their financial condition or management. Upon such a finding, the commissioner will send written notice informing the board of directors of any or all of the credit unions engaging in such a practice that the authority to engage in the practice has been revoked or modified. When the commissioner so notifies any credit union, its directors and officers shall forthwith take steps to liquidate the investments in question or to make such modifications as the commissioner requires. Upon demonstration of good cause, the commissioner may grant a credit union some definite period of time in which to arrange its affairs to comply with the commissioner's direction. The commissioner deems credit unions that continue to engage in investment practices after their authority to do so has been revoked or modified to be engaging in an unsound practice.

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

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John J. Kolhoff

Commissioner

Credit Union Department

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For further information, please call: (512) 837-9326



SUBCHAPTER I. RESERVES AND DIVIDENDS

7 TAC §91.901

The Credit Union Commission (the Commission) adopts the amendments to Texas Administrative Code, Title 7, Chapter 91, Subchapter I, §91.901, concerning reserve requirements, without changes to the proposed text as published in the July 26, 2019, issue of the *Texas Register* (44 TexReg 3723). The amendments will not be republished.

The amended rule ensures uniformity between the Commission's rules and federal regulations, specifically those regarding the deadlines for waiver applications contained in NCUA 12 C.F.R. Part 702.201, relating to Prompt Corrective Action (PCA) requirements for waiver applications.

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

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

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

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TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 303. GENERAL PROVISIONS

SUBCHAPTER G. HORSE INDUSTRY ESCROW ACCOUNT

The Texas Racing Commission ("the Commission") adopts new 16 TAC §303.301, Definitions; §303.302, General Provisions; 16 TAC §303.311, Allocations to Horse Racetrack Associations; 16 TAC §303.312, Limitation on Use of Funds by Racetrack Associations; 16 TAC §303.321, Allocations to Breed Registries; 16 TAC §303.322, Limitations on Use of Funds by Breed Registries; 16 TAC §303.323, Modifications to Approved Events; 16 TAC §303.324, Recordkeeping and Audits; and 16 TAC §303.325, Quarterly Reports, with changes from the text as proposed in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5466). Changes are being made to §§303.301, 303.312, 303.321, and 303.322, which are being republished. The new sections make up Subchapter G relating to the horse industry escrow account created by House Bill 2463 (86th Legislature, Regular Session, 2019). Section 303.301 defines certain terms relating to the account, and §303.302 establishes general provisions relating to both the portion of the funds to be allocated to horse racetrack associations for purses and the portion to be allocated to breed registries for events that further the horse industry. Section 303.311 contains provisions currently in 16 TAC §321.509, Escrowed Purse Account (being repealed elsewhere in this issue) regarding allocations to horse racetrack associations for purses, and §303.312 provides that funds allocated to racetrack associations from the horse industry escrow account may only be used for purses and for administrative expenses specifically authorized in the Racing Act. Section 303.321 establishes the requirements for a breed registry's request for allocation of funds from the account, the criteria for the Commission to approve and prioritize requests, and allows the executive director to act on behalf of the Commission to approve requests prior to January 1, 2020. Section 303.322 establishes limitations on the use of funds by breed registries, including types of expenses that cannot be paid with funds from the account. Section 303.323 contains requirements for requests for approval of changes to previously approved events, including which changes can be approved by the executive director and which changes must be approved by the Commission. Section 303.324 requires breed registries to maintain records of expenses paid with funds from the account, allows the Commission and other agencies to conduct audits, and requires breed registries to include the funds received from the account in the audits they are required to submit to the Commission each year. Last, §303.325 requires breed registries receiving funds from the account to submit quarterly reports to the Commission regarding use of the funds.

The changes from the sections as proposed are as follows: (1) in §303.301, Definitions, the definition of "event" was deleted; (2) §303.312, Limitation on Use of Funds by Racetrack Associations, is amended to allow for the payment of administrative expenses payable to the horsemen's organization pursuant to Section 2028.102 of the Act; (3) §303.322, Limitation on Use of Funds by Breed Registries, is amended to allow up to five percent of the funds a breed registry receives from the Account to be used for operating expenses and/or the purchase of capital assets; and (4) §303.321, Allocations to Breed Registries, is amended to require that any funds to be used for operating expenses and/or the purchase of capital assets be specifically listed in the breed registry's request for allocation from the fund. The changes affect no new persons, entities, or subjects other than those given notice of the original proposal.

REASONED JUSTIFICATION

The reasoned justification for the new sections is to implement H.B. 2463 to support the horse industry in Texas and to realize the resulting economic benefits of strengthened horse racing and horse industries.

PUBLIC COMMENTS AND AGENCY RESPONSE

The agency received three oral comments in response to the proposal of these rules.

COMMENT: A representative of the Texas Thoroughbred Association (TTA) spoke against the proposed definition of "event" in §303.301 because the TTA would like to use funds from the Account for activities that may not fit within the proposed definition.

RESPONSE: The Commission recognizes that the proposed definition may not include all activities the breed registries intend to pursue. As the Commission retains the authority to approve or deny requests for funding from the Account, §303.301 is amended to eliminate the definition of "event."

COMMENT: A commenter spoke against the provision in proposed §303.322 against using funds from the Account for operating expenses and capital assets.

RESPONSE: The Commission acknowledges that the breed registries may incur legitimate costs in connection with the administration of the funds from the Account. Accordingly, §303.322 is amended to allow up to five percent of the funds a breed registry receives from the Account to be used for operating expenses and the purchase of capital assets. Section 303.321 is also amended to require breed registries to specifically address in their applications any operating expenses and capital assets they intend to pay for with funds from the Account.

COMMENT: A representative of the Texas Horsemen's Partnership (THP) commented that §303.312 as proposed would not allow the THP to collect administrative expenses payable to the horsemen's organization pursuant to Section 2028.102 of the Act.

RESPONSE: The Commission acknowledges this concern and has added language to §303.312 to allow the THP to collect administrative expenses payable to the horsemen's organization pursuant to Section 2028.102 of the Act.

DIVISION 1. GENERAL PROVISIONS

16 TAC §303.301, §303.302

STATUTORY AUTHORITY

The new sections are adopted under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act, and §2028.201, which requires the Commission to adopt rules relating to Tex. Occ. Code Subchapter E, Chapter 2028, which includes the new provisions creating the horse industry escrow account.

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

§303.301. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

- (1) Account - the horse industry escrow account.
- (2) Association - a horse racetrack association.

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

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Chuck Trout

Executive Director

Texas Racing Commission

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DIVISION 2. HORSE RACETRACK ASSOCIATIONS

16 TAC §303.311, §303.312

STATUTORY AUTHORITY

The new sections are adopted under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act, and §2028.201, which requires the Commission to adopt rules relating to Tex. Occ. Code Subchapter E, Chapter 2028, which includes the new provisions creating the horse industry escrow account.

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

§303.312. *Limitation on Use of Funds by Racetrack Associations.*

Funds allocated to racetrack associations from the horse industry escrow account may only be used for purses and for administrative expenses payable to the horsemen's organization pursuant to Section 2028.102 of the Act.

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

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Chuck Trout

Executive Director

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DIVISION 3. BREED REGISTRIES

16 TAC §§303.321 - 303.325

STATUTORY AUTHORITY

The new sections are adopted under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act, and § 2028.201, which requires the Commission to adopt rules relating to Tex. Occ. Code Subchapter E, Chapter 2028, which includes the new provisions creating the horse industry escrow account.

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

§303.321. *Allocations to Breed Registries.*

(a) A breed registry is eligible to request funds from the horse industry escrow account if it is listed in Section 2030.002(a) of the Act.

(b) When requesting an allocation from the horse industry escrow account, an eligible breed registry shall indicate the event(s) for which it intends to use the funds and provide the following information for each event:

- (1) the date(s) or approximate date(s);
- (2) a detailed description of the event;
- (3) the dollar amount requested for the event;

(4) a detailed explanation of the budget for the event, with any costs related to personnel, the purchase of assets, and other administrative expenses stated separately; and

(5) the anticipated economic impact of the event on the horse industry.

(c) The Commission may approve a request for allocation of funds submitted by an eligible breed registry if, after considering the factors set forth in the Act, §2028.204(b), it finds that the request satisfies the requirement that the funds be used for events to further the horse industry. Requests may be approved in full or in part, at the discretion of the Commission.

(d) In the event that the total of funds requested by eligible breed registries exceed the funds expected to be available in the account, the Commission may approve requests on a pro rata basis, may approve funding for certain events but not others, or a combination. Priority shall be given to events that the Commission finds likely to have the greatest economic impact in the following areas:

- (1) the state's horse racing industry;
- (2) live racing at the state's racetracks;
- (3) the horse breeding industry;
- (4) the state of Texas as a whole; and
- (5) non-racing horse industry activities.

(e) Notwithstanding subsections (c) and (d) of this section, prior to January 1, 2020, the executive director may act on behalf of the Commission to approve requests for allocation from the account.

§303.322. *Limitations on Use of Funds by Breed Registries.*

(a) A breed registry may use horse industry escrow account funds only for events that further the horse industry. The Commission may require a breed registry to repay funds if the breed registry fails to expend the funds in accordance with Section 2028.204 of the Act and this section within twelve months of the date it receives the funds.

(b) The following types of costs may not be paid with funds allocated from the account:

- (1) capital improvements;
- (2) donations or contributions made to any individual or organization without express approval from the Commission for such contribution or donation;
- (3) costs of entertainment, amusements, social activities, and incidental costs relating thereto, including tickets to shows or sports events, meals, alcoholic beverages, lodging, rentals, transportation, tips, and gratuities;
- (4) fines, penalties, or other costs resulting from violations of or failure to comply with federal, state, or local laws and regulations;

(5) liability insurance coverage not specific to a particular event or series of events for which the Commission has allocated funds from the account;

(6) expenses related to litigation;

(7) professional association fees or dues for the breed registry or an individual;

(8) legislative expenses such as salaries and other expenses associated with lobbying the state or federal legislature or similar local governmental bodies, whether incurred for purposes of legislation or executive direction; or

(9) fundraising.

(c) The following types of costs may only be paid with funds allocated from the account, in an amount not to exceed five percent of the total allocated to the breed registry or of the approved allocation for any event, if specifically approved by the Commission:

(1) operating expenses, including the salaries of breed registry staff, interest and other financial costs related to borrowing and the cost of financing, contributions to a contingency reserve or any similar provision for unforeseen events, and audits or other accounting services; and

(2) the purchase of capital assets.

(d) A breed registry may pay a cost out of funds awarded from the horse industry escrow account if it satisfies subsections (a) through (c) of this section and is reasonable and adequately documented.

(1) A cost is reasonable if the cost does not exceed that which would be incurred by a prudent individual or organization under the circumstances prevailing at the time the decision was made to incur the cost and it is necessary to achieve the purpose for which the funds were sought.

(2) A cost is adequately documented if the cost is supported by Generally Accepted Accounting Principles, the breed registry's accounting records, and documented in accordance with §303.325 of this subchapter (relating to Quarterly Reports).

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

Filed with the Office of the Secretary of State on October 30, 2019.

TRD-201904038

Chuck Trout

Executive Director

Texas Racing Commission

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For further information, please call: (512) 833-6699



CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

SUBCHAPTER A. RACETRACK LICENSES

DIVISION 1. GENERAL PROVISIONS

16 TAC §309.8

The Texas Racing Commission ("the Commission") adopts amendments to 16 TAC §309.8, Racetrack License Fees, with a change from the text as proposed in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5470). The rule will not be republished. The amendments reduce racetrack license fees, increase the number of base race days included in the fee for Class 1 tracks, require Class 1 tracks not using all of their base days to share them with another Class 1 track at no cost, increase the cost of additional race days beyond the base number of days, impose an additional fee in the event that the simulcast tax paid to the Commission under House Bill 1995 (86th Legislature, Regular Session, 2019) falls short of projections, and requires the executive director to impose a moratorium on racetrack license fees in the event that the agency brings in more revenue than it needs. The change from the version as proposed allows the agency to charge less than the stated per-day cost for additional race days if the agency collects more revenue than expected and does not need the full amount stated in the proposed version of the rule. The change affects no new persons, entities, or subjects other than those given notice of the original proposal.

REASONED JUSTIFICATION

The reasoned justification for the amendments is consistency with HB 1995's intent to reduce racetrack license fees while ensuring that the agency generates sufficient revenue to cover its costs.

SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSE

The Commission received two comments in response to the proposed amendments.

Comment: A representative of the Texas Horsemen's Partnership objected to the base number of 48 race days per Class 1 racetrack, saying it hinders the racing industry by limiting the number of race days.

Response: The Commission respectfully disagrees, as the base number of race days is in no way a limit on the number of days a racetrack may hold live racing but rather provides a mechanism to cover the regulatory costs of any additional race days.

Comment: Representatives of a Class 1 racetrack objected to the per-day fee for days beyond the base number of days and requested that subsection (c)(1) be deleted.

Response: The Commission respectfully declines to make this change because that would leave the agency without the ability to raise funds to pay its costs of regulating additional race days beyond the number on which the agency budget is based. Additionally, the fee proposal submitted by all of the racetracks to the agency in July 2019 included the same per-day fee that these commenters now oppose (although the proposed rule structures the number of base days differently and includes more days than the tracks' proposal). However, the rule is being adopted with a minor change to the language of subsection (c)(1)(A) to allow the agency to collect a smaller per-day fee in the event that the agency collects more revenue than expected from other sources.

STATUTORY AUTHORITY

The amendments are adopted under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act, and §2025.108, which authorizes the commission to prescribe reasonable annual fees to be paid by racetrack license holders.

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

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TRD-201904042

Chuck Trout

Executive Director

Texas Racing Commission

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DIVISION 2. ACTIVE AND INACTIVE RACETRACK LICENSES

16 TAC §309.51

The Texas Racing Commission ("the Commission") adopts amendments to 16 TAC §309.51, Designation of Active and Inactive Racetrack Licenses, without changes to the text as proposed in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5472), which will not be republished. The amendments update the name of the Escrowed Purse Account to Horse Industry Escrow Account in light of HB 2463 (86th Legislature, Regular Session, 2019) and also update the citation to Vernon's Civil Statutes in light of SB 1969 (85th Legislature, Regular Session, 2017), which codified the Texas Racing Act as Subtitle A-1, Title 13, Texas Occupations Code, effective April 1, 2019.

REASONED JUSTIFICATION

The reasoned justification for these amendments is that the language of the rule will be consistent with amendments to the Texas Racing Act.

PUBLIC COMMENTS

No comments were submitted in response to the proposed amendments.

STATUTORY AUTHORITY

The amendments are adopted under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act.

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

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

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Chuck Trout

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For further information, please call: (512) 833-6699

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SUBCHAPTER B. OPERATIONS OF RACETRACKS

DIVISION 2. FACILITIES AND EQUIPMENT

16 TAC §309.118

The Texas Racing Commission ("the Commission") adopts amendments to 16 TAC §309.118, Regulatory Office Space and Equipment, without changes to the text as proposed in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5473), which will not be republished. The amendments update provisions requiring racetrack associations to provide telephone lines for accessing the internet to instead require Ethernet or other secure internet lines for this purpose, and also update the title of the executive director of the agency.

REASONED JUSTIFICATION

The reasoned justification for these amendments is that they ensure updated telecommunications infrastructure for agency operations at racetracks, as well as updated terminology within the rules.

PUBLIC COMMENTS

No comments were submitted in response to the proposed amendments.

STATUTORY AUTHORITY

The amendments are adopted under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act.

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

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

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For further information, please call: (512) 833-6699



CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §319.3

The Texas Racing Commission ("the Commission") adopts amendments to 16 TAC §319.3, Medication Restricted, without changes to the text as proposed in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5475), which will not be republished. The amendments add albuterol to the current prohibition on clenbuterol, eliminate the provisions placing a horse on the Veterinarian's List for testing positive for clenbuterol,

and require a negative test for all beta-agonist drugs (the class of drugs that includes clenbuterol and albuterol) before being removed from the Veterinarian's List after being voluntarily placed on the list for therapeutic use of clenbuterol or albuterol.

REASONED JUSTIFICATION

The reasoned justification for the amendments is to increase assurance that race animals are not being administered bronchodilators for their anabolic effects, as well as to ensure greater consistency in how medication restrictions are implemented.

PUBLIC COMMENTS

No comments were submitted in response to this proposal.

STATUTORY AUTHORITY

The amendments are adopted under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act, and §2034.001, which requires the Commission to adopt rules prohibiting a person from unlawfully influencing or affecting the outcome of a race.

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

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

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Chuck Trout

Executive Director

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SUBCHAPTER B. TREATMENT OF HORSES

16 TAC §319.102

The Texas Racing Commission ("the Commission") adopts amendments to 16 TAC §319.102, Veterinarian's List, without changes from the text as proposed in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5477), which will not be republished. The amendments would require that a horse participating in a workout or qualifying race for the purpose of being removed from the veterinarian's list have no detectable level of any permissible therapeutic medication other than furosemide.

REASONED JUSTIFICATION

The reasoned justification for the amendments is that race animals working off the veterinarian's list should be free of all medications that are not allowed on race day.

PUBLIC COMMENTS

No comments were submitted in response to the proposed amendments.

STATUTORY AUTHORITY

The amendments are adopted under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act, and §2034.001, which requires the

Commission to adopt rules prohibiting a person from unlawfully influencing or affecting the outcome of a race.

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

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

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Chuck Trout

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For further information, please call: (512) 833-6699



SUBCHAPTER D. DRUG TESTING DIVISION 2. TESTING PROCEDURES

16 TAC §319.333

The Texas Racing Commission ("the Commission") adopts amendments to 16 TAC §319.333, Specimen Tags, without changes to the text as proposed in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5478), which will not be republished. The amendments eliminate the specific requirements for specimen labeling for drug testing, requiring instead that specimens be marked for identification in a manner that ensures that the Commission can identify which horse, trainer, owners, and race the specimen came from and that the laboratory testing the sample cannot, leaving the specific labeling requirements to be outlined in the written test barn procedures.

REASONED JUSTIFICATION

The reasoned justification for the amendments is to ensure that the agency can adapt to changing packaging and procedural requirements, such as those of drug testing laboratories, with regard to specimen processing while maintaining the integrity of samples.

PUBLIC COMMENTS

No comments were submitted in response to the proposed amendments.

STATUTORY AUTHORITY

The amendments are adopted under Tex. Occ. Code 2023.004, which authorizes the Commission to adopt rules to administer the Act.

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

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

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Chuck Trout
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CHAPTER 321. PARI-MUTUEL WAGERING
SUBCHAPTER C. REGULATION OF LIVE
WAGERING
DIVISION 2. DISTRIBUTION OF
PARI-MUTUEL POOLS

16 TAC §321.313

The Texas Racing Commission ("the Commission") adopts amendments to 16 TAC §321.313, Select Three, Four, or Five, without changes to the text as proposed in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5479), which will not be republished. This section establishes the select three, four, or five wager. The amendments require the stewards to declare races a "no contest" for select three, four, or five purposes when the conditions of a turf course warrant a change of racing surface in any race open to a select three, four, or five and the change was not made known to the public before the close of wagering for the first of the races.

REASONED JUSTIFICATION

The reasoned justification for the amendments is that wagers placed with the expectation that a race would be run on turf should not influence the outcome of the Select Three, Four, or Five wager in cases where the race was moved to a dirt track.

PUBLIC COMMENTS

No comments were submitted in response to the proposed amendments.

STATUTORY AUTHORITY

The amendments are adopted under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act, and Tex. Occ. Code §2027.001, which requires the Commission to adopt rules to regulate pari-mutuel wagering on horse and greyhound races.

No other statute, code, or article is affected by the amendments

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

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Chuck Trout
Executive Director
Texas Racing Commission
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For further information, please call: (512) 833-6699

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SUBCHAPTER D. SIMULCAST WAGERING
DIVISION 3. SIMULCASTING AT HORSE
RACETRACKS

16 TAC §321.509

The Texas Racing Commission ("the Commission") adopts the repeal of 16 TAC §321.509, Escrowed Purse Account as proposed in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5480). The repeal is necessary because the content of this section is being reorganized into new Subchapter G of Chapter 303 in light of House Bill 2463 (86th Legislature, Regular Session, 2019), which changed the name of the account to "horse industry escrow account" and expanded its scope and funding.

REASONED JUSTIFICATION

The reasoned justification for this repeal is that the provisions of this rule are being consolidated with the rest of the rules implementing House Bill 2463.

PUBLIC COMMENTS

No comments were submitted in response to the proposed repeal of this section.

STATUTORY AUTHORITY

The repeal is adopted under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act.

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

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

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TRD-201904041
Chuck Trout
Executive Director
Texas Racing Commission
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For further information, please call: (512) 833-6699

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TITLE 19. EDUCATION

**PART 1. TEXAS HIGHER EDUCATION
COORDINATING BOARD**

**CHAPTER 1. AGENCY ADMINISTRATION
SUBCHAPTER U. MARKETABLE SKILLS
TASK FORCE**

19 TAC §§1.230 - 1.236

The Texas Higher Education Coordinating Board adopts new Chapter 1, Subchapter U, §§1.230 - 1.236, concerning the establishment of a Marketable Skills Task Force, without changes to the proposed text as published in the July 26, 2019, issue of the *Texas Register* (44 TexReg 3729). The rules will not be republished.

The new rules authorize the Board to establish a Marketable Skills Task Force to provide the Commissioner and the Board with guidance regarding the implementation of the strategies under the Marketable Skills goal of 60x30TX.

No comments were received.

Statutory authority for this subchapter is provided in the Texas Government Code, 2110.0012, which requires a state agency that establishes an advisory committee to adopt rules that state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency.

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

Filed with the Office of the Secretary of State on November 4, 2019.

TRD-201904095

William Franz

General Counsel

Texas Higher Education Coordinating Board

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Proposal publication date: July 26, 2019

For further information, please call: (512) 427-6206



CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER D. DUAL CREDIT PARTNERSHIPS BETWEEN SECONDARY SCHOOLS AND TEXAS PUBLIC COLLEGES

19 TAC §§4.83 - 4.85

The Texas Higher Education Coordinating Board adopts amendments to Chapter 4, Rules Applying to All Public Institutions of Higher Education in Texas, Subchapter D, Dual Credit Partnerships Between Secondary Schools and Texas Public Colleges, §4.83, concerning definitions; §4.84, concerning institutional agreements; and §4.85, concerning dual credit requirements without changes to proposed text as published in the August 9, 2019, issue of the *Texas Register* (44 TexReg 4164). The rules will not be republished.

No comments were received.

The amendments are adopted under the Texas Education Code, Sections §28.009(b) and §130.001(b)(3) - (4), which provide the Coordinating Board with the authority to regulate dual credit partnerships between public two-year associate degree-granting institutions and public universities with secondary schools.

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

Filed with the Office of the Secretary of State on November 4, 2019.

TRD-201904096

William Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: November 24, 2019

Proposal publication date: August 9, 2019

For further information, please call: (512) 427-6206



CHAPTER 15. NATIONAL RESEARCH UNIVERSITIES

SUBCHAPTER C. NATIONAL RESEARCH UNIVERSITY FUND

19 TAC §15.43

The Texas Higher Education Coordinating Board adopts amendments to Texas Administration Code, Chapter 15, Subchapter C, §15.43, concerning the eligibility criteria to receive distributions from the National Research University Fund, without changes to the proposed text as published in the July 26, 2019, issue of the *Texas Register* (44 TexReg 3731).

Specifically, the amendments clarify:

(a) in rule section 15.43(b)(3)(C)(ii), a minimum 75th percentile score for the SAT effective with the fall 2017 semester, based on the concordance table for scores prior to and since fall 2017, as provided by the College Board (<https://collegereadiness.collegeboard.org/educators/highered/scoring/concordance>);

(b) in rule section 15.43(b)(3)(E)(i), corrected names for the academies that provide awards of national and international distinction to faculty; and

(c) in rule section 15.43(b)(3)(E)(ii), corrected names for faculty awards of distinction.

No comments were received.

The amendments are adopted under the Texas Education Code, Chapter 62, Subchapter G, Section 62.146, which provides the Texas Higher Education Coordinating Board with the authority to prescribe standard methods of reporting information for the purpose of determining the eligibility of institutions for the National Research University Fund.

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

Filed with the Office of the Secretary of State on November 4, 2019.

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William Franz

General Counsel

Texas Higher Education Coordinating Board

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Proposal publication date: July 26, 2019

For further information, please call: (512) 427-6206



PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS
SUBCHAPTER A. REQUIRED CURRICULUM
19 TAC §74.6

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 19 TAC §74.6 are not included in the print version of the Texas Register. The figures are available in the on-line version of the November 15, 2019, issue of the Texas Register.)

The State Board of Education (SBOE) adopts an amendment to §74.6, concerning college and career readiness and Texas Essential Knowledge and Skills (TEKS) alignment. The amendment is adopted with changes to the proposed text as published in the May 3, 2019 issue of the *Texas Register* (44 TexReg 2207) and will be republished. The adopted amendment updates the alignment charts for the College and Career Readiness Standards (CCRS) and the TEKS to add a new alignment chart for English language arts and to reflect changes resulting from recent updates to the English language arts and mathematics CCRS.

REASONED JUSTIFICATION: In 2006, the 79th Texas Legislature required the Texas Education Agency (TEA) and the Texas Higher Education Coordinating Board (THECB) to establish vertical teams composed of public school educators and faculty from institutions of higher education to develop college- and career-ready standards in the areas of English/language arts, mathematics, science, and social studies. The work of the vertical teams was organized in three phases. The first phase included a series of team meetings to create the CCRS for the four subject areas. Phase two required the vertical teams to make recommendations regarding alignment of the TEKS with the CCRS. Phase three required the vertical teams to develop or establish instructional strategies, professional development materials, and online support materials for students who need additional assistance in preparing to successfully perform college-level work. Teams also engaged in a series of gap analyses to ensure alignment between the adopted TEKS and the CCRS.

The THECB adopted the CCRS in January 2008. The commissioner of education approved the CCRS, and the SBOE incorporated them into the TEKS as follows: English language arts and reading TEKS in 2008; mathematics and science TEKS in 2009; and social studies TEKS in 2010.

The 84th Texas Legislature, Regular Session, 2015, passed House Bill 1613, amending Texas Education Code (TEC), §28.008, to require the SBOE to adopt a chart by rule that clearly indicates the alignment of the college readiness standards and expectations with the TEKS. In January 2016, the SBOE approved 19 TAC §74.6, which adopted in rule charts demonstrating the alignment of the TEKS with the mathematics, science, social studies, and cross-disciplinary CCRS. The SBOE did not adopt charts for English language arts and reading because the TEKS for that subject area were being updated at the time the rule was adopted.

The SBOE gave final approval for the revised English language arts and reading TEKS in May 2017. The revised TEKS will be implemented in the 2019-2020 school year for Kindergarten-Grade 8. The high school TEKS will be implemented in the 2020-2021 school year.

In 2018, the THECB updated the CCRS for language arts and mathematics. As a result, the mathematics alignment chart in §74.6 is also updated to reflect the changes to the CCRS. The adopted new English language arts chart also reflects the revisions to the CCRS.

The following changes were made to the chart adopted in §74.6(f) since published as proposed. Standard II.D.2 was updated to add references to English I, student expectation (6)(A), and English III, student expectation (6)(B). Standard II.D.3 was updated to add a reference to English I-IV, student expectation (8)(D). A technical edit was made to Standard V.C.3 to remove course titles that had no student expectations aligned to the CCRS.

The SBOE approved the proposed amendment for first reading and filing authorization at its April 5, 2019 meeting and for second reading and final adoption at its June 14, 2019 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2020-2021 school year. The earlier effective date will ensure accurate information is available related to alignments at the start of the 2019-2020 school year. The effective date is 20 days after filing as adopted with the Texas Register.

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began May 3, 2019, and ended June 7, 2019. The SBOE also provided an opportunity for registered oral and written comments at its June 2019 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and the corresponding responses.

Comment. Two teachers expressed concern about the costs to districts associated with the proposed changes to mathematics in §74.6 such as writing new curriculum, training teachers, and printing.

Response. The SBOE provides the following clarification. Figure 19 TAC §74.6(b) reflects the alignment of the mathematics CCRS to the TEKS, which are currently implemented in classrooms and are not proposed to be revised. The proposed changes to the figure do not reflect changes to the state curriculum standards but only to the alignment.

Comment. One teacher stated that the new wording is clear and specific and would allow for targeting the achievement goals.

Response. The SBOE agrees.

Comment. One teacher expressed support for the CCRS alignment charts because the charts reflect the multidisciplinary potential of college and career readiness classes.

Response. The SBOE agrees.

Comment. One teacher requested a clearer explanation of how the CCRS alignment charts should be integrated.

Response. The SBOE provides the following clarification. Proposed changes to Figure 19 TAC §74.6(b) and new Figure 19 TAC §74.6(f) reflect the alignment of the mathematics and language arts CCRS to the TEKS, which are not proposed to be revised. The figures reflect the integration of the CCRS with the TEKS and are not new standards.

Comment. One teacher requested an explanation of how the alignment between the TEKS and the CCRS would look in a model environment that emphasizes collegial collaboration.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One administrator recommended adding student expectation (4)(H) from the Grade 6 mathematics TEKS to the CCRS I.B.2.

Response. The SBOE disagrees and has determined that the addition of Grade 6 student expectation (4)(H) to CCRS I.B.2 was not necessary.

Comment. One administrator recommended adding student expectation (4)(H) from the Grade 6 mathematics TEKS and student expectation (4)(E) from the Grade 7 mathematics TEKS to CCRS I.C.1.

Response. The SBOE disagrees and has determined that the addition of Grade 6 student expectation (4)(H) and Grade 7 student expectation (4)(E) to mathematics CCRS I.C.1 was not necessary.

Comment. One administrator questioned why the alignment chart includes courses that are not required for graduation and in which not all students will enroll.

Response. The SBOE provides the following clarification. TEC, §28.008(d), requires that the SBOE develop and by rule adopt a chart that clearly indicates the alignment of the college readiness standards and expectations with the TEKS identified by the board for all subjects of the required curriculum.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; and TEC, §28.008(d), which requires the SBOE to adopt a chart by rule that clearly indicates the alignment of the college readiness standards and expectations with the Texas Essential Knowledge and Skills.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §7.102(c)(4) and §28.008(d).

§74.6. College and Career Readiness and Texas Essential Knowledge and Skills Alignment.

(a) In accordance with the Texas Education Code, §28.008, the State Board of Education shall incorporate College and Career Readiness Standards approved by the commissioner of education and the Texas Higher Education Coordinating Board into the essential knowledge and skills and indicate the alignment of the College and Career Readiness Standards with the essential knowledge and skills.

(b) The figure in this subsection identifies the alignment of the College and Career Readiness Standards for mathematics with the essential knowledge and skills.
Figure: 19 TAC §74.6(b)

(c) The figure in this subsection identifies the alignment of the College and Career Readiness Standards for science with the essential knowledge and skills.
Figure: 19 TAC §74.6(c) (No change.)

(d) The figure in this subsection identifies the alignment of the College and Career Readiness Standards for social studies with the essential knowledge and skills.
Figure: 19 TAC §74.6(d) (No change.)

(e) The figure in this subsection identifies the alignment of the College and Career Readiness Standards for cross-disciplinary studies with the essential knowledge and skills.
Figure: 19 TAC §74.6(e) (No change.)

(f) The figure in this subsection identifies the alignment of the College and Career Readiness Standards for English language arts with the essential knowledge and skills.

Figure: 19 TAC §74.6(f)

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

Filed with the Office of the Secretary of State on November 4, 2019.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: November 24, 2019

Proposal publication date: May 3, 2019

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



SUBCHAPTER B. GRADUATION REQUIREMENTS

19 TAC §74.11

The State Board of Education (SBOE) adopts an amendment to §74.11, concerning high school graduation requirements. The amendment is adopted without changes to the proposed text as published in the May 3, 2019 issue of the *Texas Register* (44 TexReg 2208) and will not be republished. The adopted amendment updates the section to align with the requirements of Texas Education Code (TEC), §28.025(b-7), which allows a student who completes the core curriculum of a Texas institution of higher education (IHE) while in high school to earn an endorsement, the distinguished level of achievement, and a high school diploma.

REASONED JUSTIFICATION: The 83rd Texas Legislature, Regular Session, 2013, passed House Bill (HB) 5, amending TEC, §28.025, to transition from three high school graduation programs to one foundation high school program with endorsement options to increase flexibility for students. HB 5 gave the SBOE the authority to identify advanced courses related to the new graduation program, identify the curriculum requirements for the endorsements, and determine the requirements for performance acknowledgments related to the new graduation program.

The SBOE implemented HB 5 by approving proposed revisions to 19 TAC Chapter 74, Subchapter B, Graduation Requirements, as amended, for second reading and final adoption at the January 2014 meeting. The rules were implemented beginning with students entering Grade 9 in the 2014-2015 school year.

The adopted amendment to §74.11 updates the rule to align with the requirements of TEC, §28.025(b-7), which allows a student who completes the core curriculum of a Texas IHE while in high school to earn an endorsement, the distinguished level of achievement, and a high school diploma.

The adopted amendment adds in new subsection (n) the requirement that school districts must permit a student to comply with the curriculum requirements under the Foundation High School Program by successfully completing appropriate courses in the core curriculum of an IHE. The new subsection also specifies

that a student who has completed the core curriculum of an IHE in accordance with TEC, §61.822, is considered to have earned an endorsement and a distinguished level of achievement under the Foundation High School Program and is entitled to receive a high school diploma.

In addition, a technical edit was made in subsection (g) to remove reference to 19 TAC Chapter 118, Texas Essential Knowledge and Skills for Economics with Emphasis on the Free Enterprise System and Its Benefits. The chapter was effective August 26, 2019, to reflect the inclusion of economics courses in 19 TAC Chapter 113, Texas Essential Knowledge and Skills for Social Studies.

The SBOE approved the proposed amendment for first reading and filing authorization at its April 5, 2019 meeting and for second reading and final adoption at its June 14, 2019 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2020-2021 school year. The earlier effective date will ensure the rule aligns with current statute at the earliest date possible. The effective date is 20 days after filing as adopted with the *Texas Register*.

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began May 3, 2019, and ended June 7, 2019. The SBOE also provided an opportunity for registered oral and written comments at its June 2019 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and the corresponding responses.

Comment. One counselor asked if students who are eligible to graduate under proposed new §74.11(n) would be required to take and pass the State of Texas Assessments of Academic Readiness (STAAR®) and end-of-course (EOC) assessments.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One counselor asked if the school district would reserve the right to determine whether to rank students who graduate under the provisions of proposed new §74.11(n) with seniors on traditional graduation plans. The commenter also asked if there are requirements for how students should be ranked.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One counselor and one administrator stated that it is unclear what endorsement students would earn under the provisions of proposed new §74.11(n).

Response. The SBOE provides the following clarification. Local districts would need to review the college courses completed by the student to determine which endorsements, if any, the student would be eligible to receive.

Comment. One counselor expressed concerns that average daily attendance may be impacted if the provision to graduate under proposed new §74.11(n) becomes a popular alternative to traditional four-year graduation plans.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One administrator stated that additional language to clarify what is meant by "appropriate courses in the core curriculum of an institution of higher education (IHE)" would be helpful.

Response. The SBOE disagreed and determined that the language aligned with statute and was appropriate as proposed.

Comment. One counselor stated that IHEs are not required to share student information with high schools for reasons of student privacy. The commenter suggested that there would need to be additional guidance from IHEs or TEA in order for high schools to know and be able to document whether a student has completed the core curriculum at an IHE.

Response. This comment is outside the scope of the proposed rulemaking.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; and TEC, §28.025(b-7), which requires the SBOE to by rule ensure that a student may comply with the curriculum requirements under the foundation high school program or for an endorsement by successfully completing appropriate courses in the core curriculum of an institution of higher education (IHE) under TEC, §61.822. Additionally, a student who has completed the core curriculum of an IHE under TEC, §61.822, as certified by the IHE in accordance with 19 TAC §4.28, is considered to have earned a distinguished level of achievement under the foundation high school program and is entitled to receive a high school diploma.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §7.102(c)(4) and §28.025(b-7).

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 216. CONTINUING COMPETENCY

22 TAC §216.3

Introduction. The Texas Board of Nursing (Board) adopts amendments to §216.3. The amendments are adopted with changes to the proposed text published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4623). The amended rule will be republished.

Changes to the Adopted Text. The Board received two written comments on the proposal. In response to the written comments on the published proposal, the Board has made changes to the text of the rule as adopted. None of these changes, however, materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on no-

tice. Further, the Board believes these changes address the commenters' concerns.

Background. The amendments are adopted under the authority of the Texas Occupations Code §§301.151, 157.0513 and 301.308, the Texas Health and Safety Code §481.0764 and §481.07635, and House Bills (HB) 2454, 2059, 3285, and 2174, enacted by the 86th Texas Legislature. Three of the bills, HB 2454, HB 2059, and HB 3285, apply only to advanced practice registered nurses (APRNs) who meet certain criteria. HB 2059 applies to all nurses, regardless of level of licensure, who provide direct patient care. The adopted amendments are necessary to implement these new statutory requirements.

Requirements for APRNs with Prescriptive Authority

HB 2454, which takes effect September 1, 2019, requires APRNs who have entered into a prescriptive authority agreement authorizing the prescribing of opioids to complete not less than two (2) hours of continuing education *annually* regarding safe and effective pain management related to the prescription of opioids and other controlled substances, including education regarding reasonable standards of care, the identification of drug-seeking behavior in patients, and effectively communicating with patients regarding the prescription of an opioid or other controlled substance. The Board requires licensure renewal every two years. As such, APRNs subject to this new continuing education requirement will need to complete at least four (4) hours of continuing education regarding safe and effective pain management related to the prescription of opioids and other controlled substances each renewal period. This new requirement, however, applies to the renewal of a license on or after January 1, 2021.

HB 3285, which takes effect effective September 1, 2019, requires APRNs whose practice includes the prescription of opioids to attend at least one (1) hour of continuing education *annually* covering best practices, alternative treatment options, and multi-modal approaches to pain management that may include physical therapy, psychotherapy, and other treatments. The Texas Pharmacy Board is tasked with adopting rules to establish the required content of this continuing education. This requirement takes effect September 1, 2019, but expires on August 31, 2023. The Board requires licensure renewal every two years. As such, APRNs subject to this new continuing education requirement will need to complete at least two (2) hours of continuing education covering best practices, alternative treatment options, and multi-modal approaches to pain management each renewal period until the expiration of this statutory requirement on August 31, 2023.

HB 2174, which takes effect September 1, 2019, requires APRNs who are authorized to receive information from the prescription monitoring program under the Texas Health and Safety Code §481.076(a)(5) to complete two (2) hours of continuing education related to approved procedures of prescribing and monitoring controlled substances. An APRN who was authorized to prescribe a controlled substance prior to September 1, 2020, and who is also authorized to receive information from the prescription monitoring program must complete this requirement no later than September 1, 2021. An APRN who is authorized to prescribe a controlled substance after September 1, 2020, and who is also authorized to receive information from the prescription monitoring program must complete this requirement no later than one year after his/her initial licensure date. This is a one-time education requirement.

While the majority of the adopted amendments implement new continuing education requirements for APRNs, the amendments also eliminate an existing continuing education requirement for APRNs. Under the Board's current rules, APRNs who hold prescriptive authority and prescribe controlled substances must complete at least (3) three contact hours of continuing education relating to prescribing controlled substances. These (3) three contact hours are in addition to any other continuing education requirements applicable to an APRN. The Board originally adopted this requirement in November 2013, following the passage of SB 406, enacted by the 83rd Texas Legislature, Regular Session, effective November 1, 2013. SB 406 expanded the scope of APRNs by authorizing the ordering/prescribing of Schedule II controlled substances in certain settings. The additional targeted continuing education adopted by the Board was reasonably related to the expanded scope of practice authorized by SB 406 at that time. The requirement was also adopted during a time when the Board began seeing an increase in the number of its non-therapeutic prescribing cases related to the then up-and-coming opioid crisis.

The Board has now eliminated this requirement in this adoption order. The new continuing education requirements enacted during the 86th Legislative Session more clearly define the topics that must be addressed in the required courses. The courses are designed to provide specific education regarding many of the issues affecting the opioid crisis. The Board believes these concerns will be adequately addressed by the new continuing education course requirements. Further, the Board recognizes there may be overlap between the new continuing education courses and the current education requirements for APRNs. To this end, the adopted amendments eliminate the potentially duplicative requirements. The Board believes this may reduce some of the financial burden associated with the continuing education courses without sacrificing the safety of the public or the competency of its practitioners.

The proposal required APRNs to complete the new education courses in addition to the other existing applicable continuing education requirements of the section. Both of the written comments received specifically addressed this proposed requirement. Both commenters recommended that the Board allow the new continuing education requirements to count towards completion of the existing continuing education requirements for APRNs. The Board agrees with the commenters' recommendations in this regard and has eliminated the language from the rule as adopted that would require the new continuing education requirements to be completed in addition to the existing continuing education requirements for APRNs.

Requirements for all Nurses Providing Direct Patient Care

HB 2059, which takes effect September 1, 2019, requires all nurses who provide direct patient care, regardless of licensure level, to complete a human trafficking prevention course approved by the executive commissioner of the Health and Human Services Commission. This new requirement, however, applies to the renewal of a license on or September 1, 2020. However, it will be an ongoing continuing education requirement. As such, nurses will need to complete the human trafficking prevention course each renewal period.

How the Section Will Function. Adopted §216.3(c)(3) requires an APRN who holds prescriptive authority to complete at least five additional contact hours of continuing education in pharmacotherapeutics within the licensing period. The adopted subsection eliminates the current requirement that an APRN who holds

prescriptive authority and prescribes controlled substances must complete at least three more additional contact hours of continuing education related to prescribing controlled substances.

Adopted §216.3(4) requires an APRN who has entered into a prescriptive authority agreement authorizing the prescribing of opioids to complete not less than two (2) hours of continuing education annually regarding safe and effective pain management related to the prescription of opioids and other controlled substances, including education regarding reasonable standards of care; the identification of drug-seeking behavior in patients; and effectively communicating with patients regarding the prescription of an opioid or other controlled substance. The adopted amendments clarify that this requirement applies to the renewal of licensure on or after January 1, 2021.

Adopted §216.3(5) requires an APRN whose practice includes the prescription of opioids to attend at least one (1) hour of continuing education annually covering best practices, alternative treatment options, and multi-modal approaches to pain management that may include physical therapy, psychotherapy, and other treatments. The content of the continuing education must meet the requirements set forth by the Texas Pharmacy Board. The amendments further clarify that this requirement applies to the renewal of licensure on or after September 1, 2019, and expires on August 31, 2023.

Adopted §216.3(6) requires an APRN who was licensed prior to September 1, 2020, and authorized to receive information from the prescription monitoring program to complete two (2) hours of continuing education related to approved procedures of prescribing and monitoring controlled substances no later than September 1, 2021. An APRN licensed after September 1, 2020, and authorized to receive information from the prescription monitoring program, must complete the continuing education no later than one year after the APRN's initial licensure date. The amendments further clarify that this is a one-time education requirement.

Adopted §216.3(i) requires a nurse, including an APRN, who provides direct patient care, to complete a human trafficking prevention course approved by the Health and Human Services Commission. The amendments clarify that this requirement applies to the renewal of a license on or after September 1, 2020.

Summary of Comments Received

An individual commenter states that many of the new continuing education requirements seem to overlap with the current requirement for three (3) continuing education hours on controlled substances for APRNs who prescribe these medications. The commenter urges the Board to allow some of the new requirements to satisfy the current requirement, as it appears the proposed changes to the rule do not permit this. The commenter does not believe there is anything in the law to prevent this. Further, the commenter states that, if the Board is concerned about inappropriate prescribing patterns, he believes there are other provisions in the law which will help to minimize this. The commenter states that Board Rule 228.1 went into effect in 2015 and it is the commenter's understanding that this helped significantly with ensuring APRNs were prescribing opioids appropriately. The commenter also states that the Board has been required to publish guidelines on the appropriate prescribing of opioids, benzodiazepines, barbiturates, and carisoprodol. The commenter believes once these guidelines are published, that this will indeed continue to re-enforce appropriate prescribing patterns. The commenter further states that the Board is re-

quired to intermittently check the prescriptive monitoring program to identify aberrant prescribing patterns of controlled substances, thus adding yet another mechanism by which to ensure appropriate prescribing.

A commenter representing the APRN Alliance states that its members are concerned with the significant increase in hours during the first and second renewal periods, and others are confused by the additions, subtractions, and expirations. The commenter believes these complaints from its members can be avoided by simply counting these targeted requirements towards the existing requirements. The commenter states that adding these targeted courses on top of existing hours, rather than counting them towards existing hours, is not required by statute. All other targeted hours, including forensic evidence collection, older adult or geriatric care, nursing jurisprudence, tick-borne diseases, and human trafficking all count toward existing hours. The commenter states it is unclear why the Board would have different procedures for what appears to be similar statutory language. The commenter further points out that the Texas Medical Board (TMB) discussed proposing rules at its last meeting on this same subject. The language TMB considered clearly states that the new requirements will be counted toward existing hours. Further, Board members asked whether these requirements could be met simultaneously, given the significant overlap. The commenter states that TMB ultimately decided to seek legislative intent regarding this latter issue. The commenter states that anytime the Board adds new hours, it is taking time away from continuing education in the APRN's specialty and patient population. If the legislature has determined that this is an acceptable tradeoff, the commenter states that nurses will happily comply. Although, if the legislature intended that these requirements count towards existing hours, or that they be met concurrently, the commenter states that the Board should take that intent into consideration. The commenter asks the Board to consider redrafting the proposal until after TMB has received guidance from the legislature. The commenter states that TMB will avoid confusion by counting these towards existing requirements. Depending on the feedback from the legislature, the commenter states that TMB could go further and effectively shorten the time dedicated to these subjects. The commenter states that it would be unfortunate for nurses and their patients if the Board were to have dramatically different set of rules from all other agencies.

Agency Response

The Board agrees in part and disagrees in part. First, the Board disagrees with the suggestion by the APRN Alliance that it withdraw its proposal, pending action by TMB. The Board's jurisdiction extends to advanced practice registered nurses, registered nurses, and licensed vocational nurses. Mid-level providers and physicians operate within a unique scope of practice regulated solely by TMB. While there may be some general similarities among these provider groups, the existing statutory and regulatory continuing education requirements for these groups are not the same. As such, the Board declines to delay the adoption of rules that comply with the statutory mandates of House Bill (HB) 2454, HB 2059, HB 3285, and HB 2174, as they apply to APRNs, RNs, and LVNs. The Board, however, does agree with the commenters that the new continuing education requirements should count toward a nurse's existing continuing education requirements. To this end, the Board has amended the rule text accordingly. The Board further adds that it adopted its *Guidelines for the Responsible Prescribing of Opioids, Benzodiazepines, Barbiturates, Carisoprodol (Soma), and Other Con-*

controlled Substances at its July 2018 quarterly meeting and published the guidelines on its public website shortly thereafter. Further, the Board regularly receives and reviews reports from the prescription monitoring program, as authorized by law.

Names of Those Commenting For and Against the Proposal.

For: None.

Against: None.

For, with changes: Individual commenter; APRN Alliance.

Neither for nor against, with changes: None.

Statutory Authority. The amendments are adopted under the Texas Occupations Code §§301.151, 157.0513 and 301.308, the Texas Health and Safety Code §481.0764 and §481.07635, and House Bills (HB) 2454, 2059, 3285, and 2174, enacted by the 86th Texas Legislature.

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

Section 157.0513(a) provides that the board, the Texas Board of Nursing, and the Texas Physician Assistant Board shall jointly develop a process to exchange information regarding the names, locations, and license numbers of each physician, APRN, and physician assistant who has entered into a prescriptive authority agreement; by which each board shall immediately notify the other boards when a license holder of the board becomes the subject of an investigation involving the delegation and supervision of prescriptive authority, as well as the final disposition of any such investigation; by which each board shall maintain and share a list of the board's license holders who have been subject to a final adverse disciplinary action for an act involving the delegation and supervision of prescriptive authority; and to ensure that each APRN or physician assistant who has entered into a prescriptive authority agreement authorizing the prescribing of opioids is required to complete not less than two hours of continuing education annually regarding safe and effective pain management related to the prescription of opioids and other controlled substances, including education regarding reasonable standards of care; the identification of drug-seeking behavior in patients; and effectively communicating with patients regarding the prescription of an opioid or other controlled substance.

Section 481.0764(f) provides that a prescriber or dispenser whose practice includes the prescription or dispensation of opioids shall annually attend at least one hour of continuing education covering best practices, alternative treatment options, and multi-modal approaches to pain management that may include physical therapy, psychotherapy, and other treatments. The board shall adopt rules to establish the content of continuing education described by this subsection. The board may collaborate with private and public institutions of higher education and hospitals in establishing the content of the continuing education. This subsection expires August 31, 2023.

Section 481.07635(a) provides that a person authorized to receive information under Section 481.076(a)(5) shall, not later than the first anniversary after the person is issued a license, certification, or registration to prescribe or dispense controlled

substances under this chapter, complete two hours of professional education related to approved procedures of prescribing and monitoring controlled substances.

Section 481.07635(b) states that a person authorized to receive information may annually take the professional education course under this section to fulfil hours toward the ethics education requirement of the person's license, certification, or registration.

Section 481.07635(c) states that the regulatory agency that issued the license, certification, or registration to a person authorized to receive information under Section 481.076(a)(5) shall approve professional education to satisfy the requirements of this section.

§216.3. Continuing Competency Requirements.

(a) A nurse must meet either the requirements of this subsection or subsection (b) of this section. A nurse may choose to complete 20 contact hours of continuing nursing education (CNE) in the nurse's area of practice within licensing period, as defined in this chapter. These contact hours shall be obtained by participation in programs approved by a credentialing agency or provider recognized by the Board. A list of these agencies/providers may be obtained from the Board's office or website.

(b) A nurse must meet either the requirements of this subsection or subsection (a) of this section. A nurse may choose to demonstrate the achievement, maintenance, or renewal of a Board approved national nursing certification in the nurse's area of practice within the licensing period, as defined in this chapter. A list of approved national nursing certifications may be obtained from the Board's office or website.

(c) Requirements for the APRN. A nurse licensed by the Board as an APRN is required to complete 20 contact hours of continuing education or achieve, maintain, or renew the national nursing certification recognized by the Board as meeting the certification requirement for the APRN's role and population focus area of licensure within the licensing period, as defined in this chapter.

(1) The required 20 contact hours are not in addition to the requirements of subsection (a) or (b) of this section.

(2) The 20 contact hours of continuing education must be appropriate to the advanced practice role and population focus area recognized by the Board.

(3) The APRN who holds prescriptive authority must complete, in addition to the requirements of this subsection, at least five additional contact hours of continuing education in pharmacotherapeutics within the licensing period.

(4) The APRN who has entered into a prescriptive authority agreement authorizing the prescribing of opioids must complete not less than two (2) hours of continuing education annually regarding safe and effective pain management related to the prescription of opioids and other controlled substances, including education regarding reasonable standards of care; the identification of drug-seeking behavior in patients; and effectively communicating with patients regarding the prescription of an opioid or other controlled substance. This requirement applies to renewal of licensure on or after January 1, 2021.

(5) The APRN whose practice includes the prescription of opioids must attend at least one (1) hour of continuing education annually covering best practices, alternative treatment options, and multi-modal approaches to pain management that may include physical therapy, psychotherapy, and other treatments. The content of the continuing education described by this paragraph must meet the requirements set forth by the Texas Pharmacy Board. This requirement applies to

renewal of licensure on or after September 1, 2019, and expires on August 31, 2023.

(6) The APRN who is licensed prior to September 1, 2020, and authorized to receive information from the prescription monitoring program (PMP) authorized by Chapter 481, Health and Safety Code, must complete two (2) hours of continuing education related to approved procedures of prescribing and monitoring controlled substances no later than September 1, 2021. The APRN licensed after September 1, 2020, and authorized to receive information from the PMP, must complete the continuing education required by this paragraph no later than one year after the APRN's initial licensure date. This is a one-time education requirement.

(7) Category I Continuing Medical Education (CME) contact hours will meet requirements as described in this chapter, unless otherwise prohibited.

(d) Forensic Evidence Collection.

(1) Pursuant to the Health and Safety Code §323.004 and §323.0045, a nurse licensed in Texas or holding a privilege to practice in Texas, including an APRN, who performs a forensic examination on a sexual assault survivor must have basic forensic evidence collection training or the equivalent education prior to performing the examination. This requirement may be met through the completion of CNE that meets the requirements of this subsection. This is a one-time requirement. An APRN may use continuing medical education in forensic evidence collection that is approved by the Texas Medical Board to satisfy this requirement.

(2) A nurse licensed in Texas or holding a privilege to practice in Texas, including an APRN, who is employed in an emergency room (ER) setting must complete a minimum of two contact hours of CNE relating to forensic evidence collection that meets the requirements of this subsection within two years of the initial date of the nurse's employment in an ER setting. This is a one-time requirement.

(A) This requirement applies to nurses who work in an ER setting that is:

- (i) the nurse's home unit;
- (ii) an ER unit to which the nurse "floats" or schedules shifts; or
- (iii) a nurse employed under contractual, temporary, per diem, agency, traveling, or other employment relationship whose duties include working in an ER.

(B) A nurse shall be considered to have met the requirements of paragraphs (1) and (2) of this subsection if the nurse:

- (i) completed CNE during the time period of February 19, 2006 through September 1, 2013; and
- (ii) the CNE met the requirements of the Board's rules related to forensic evidence collection that were in effect from February 19, 2006 through September 1, 2013.

(C) Completion of at least two contact hours of CNE that meets the requirements of this subsection may simultaneously satisfy the requirements of paragraphs (1) and (2) of this subsection.

(3) A nurse who would otherwise be exempt from CNE requirements for issuance of the initial Texas license and for the immediate licensing period following initial Texas licensure under §216.8(b) or (c) of this chapter (relating to Relicensure Process) shall comply with the requirements of this section. In compliance with §216.7(b) of this chapter (relating to Responsibilities of Individual Licensee), each licensee is responsible for maintaining records of CNE completion.

Record of course completion in forensic evidence collection should be retained by the nurse indefinitely, even if a nurse changes employment.

(4) Continuing education completed under this subsection shall include information relevant to forensic evidence collection and age or population-specific nursing interventions that may be required by other laws and/or are necessary in order to assure evidence collection that meets requirements under the Government Code §420.031 regarding use of an Attorney General-approved evidence collection kit and protocol. Content may also include, but is not limited to, documentation, history-taking skills, use of sexual assault kit, survivor symptoms, and emotional and psychological support interventions for victims.

(5) The hours of continuing education completed under this subsection shall count towards completion of the 20 contact hours of CNE required in subsection (a) of this section. Certification related to forensic evidence collection that is approved by the Board may be used to fulfill the requirements of this subsection.

(e) A nurse who holds or is seeking to hold a valid Volunteer Retired (VR) Nurse Authorization in compliance with the Occupations Code §112.051 and §301.261(e) and §217.9(e) of this title (relating to Inactive and Retired Status):

(1) Must, if licensed by the Board as a LVN and/or RN, have completed at least 10 contact hours of CNE in his or her area of practice within the two years immediately preceding application for, or renewal of, VR status.

(2) Must, if licensed by the Board as an APRN, have completed at least 20 contact hours of continuing education in his or her area of practice within the two years immediately preceding application for, or renewal of, VR status. The 20 hours of continuing education must meet the same criteria as APRN continuing education defined under subsection (c) of this section. A nurse authorized as a VR-RN/APRN may not hold prescriptive authority. This does not preclude a registered nurse from placing his or her APRN license on inactive status and applying for authorization only as a VR-RN.

(3) Is exempt from fulfilling targeted continuing education requirements.

(f) Tick-Borne Diseases. An APRN whose practice includes the treatment of tick-borne diseases is encouraged to participate in continuing education relating to the treatment of tick-borne diseases. The continuing education course(s) should contain information relevant to treatment of the disease within the APRN's role and population focus area of licensure and may represent a spectrum of relevant medical clinical treatment relating to tick-borne disease. Completion of CME in the treatment of tick-borne disease that meets the requirements of this subsection shall count towards completion of the 20 contact hours of continuing education required for APRNs in subsection (c) of this section.

(g) Nursing Jurisprudence and Nursing Ethics. Each nurse, including an APRN, is required to complete at least two contact hours of CNE relating to nursing jurisprudence and nursing ethics before the end of every third two-year licensing period applicable to licensing periods that began on or after January 1, 2014. The CNE course(s) shall contain information related to the Texas Nursing Practice Act, the Board's rules, including §217.11 of this title (relating to Standards of Nursing Practice), the Board's position statements, principles of nursing ethics, and professional boundaries. The hours of CNE completed under this subsection shall count towards completion of the 20 contact hours of CNE required in subsection (a) of this section. Certification and/or CME may not be used to fulfill the CNE requirements of this subsection.

(h) Older Adult or Geriatric Care. A nurse, including an APRN, whose practice includes older adult or geriatric populations is required to complete at least two contact hours of CNE relating to older adult or geriatric populations or maintain certification in an area of practice relating to older adult or geriatric populations before the end of every licensing period, applicable to licensing periods that began on or after January 1, 2014. The CNE course(s) may contain information related to elder abuse, age-related memory changes and disease processes, including chronic conditions, end of life issues, health maintenance, and health promotion. The hours of CNE completed under this subsection shall count towards completion of the 20 contact hours of CNE required in subsection (a) of this section. Certification related to older adult or geriatric populations that is approved by the Board may be used to fulfill the CNE requirements of this subsection.

(i) Human Trafficking Prevention. A nurse, including an APRN, who provides direct patient care must complete a human trafficking prevention course approved by the Health and Human Services Commission. This requirement applies to the renewal of a license on or after September 1, 2020.

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

Filed with the Office of the Secretary of State on October 30, 2019.

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Jena Abel

Deputy General Counsel

Texas Board of Nursing

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



TITLE 25. HEALTH SERVICES

PART 4. ANATOMICAL BOARD OF THE STATE OF TEXAS

CHAPTER 475. MEETINGS

25 TAC §475.5

INTRODUCTION:

The Anatomical Board of the State of Texas (Board) adopts amendments to 25 TAC §475.5, related to operation of the Board, as well as Willing Body Programs in the State of Texas. The revision of §475.5 is needed in order to allow reimbursement of travel expenses to Board staff as well as Board members.

The Board adopts amendments to §475.5, without changes to the proposed text as published in the May 3, 2019, issue of the *Texas Register* (44 TexReg 2253). The amended rules will not be republished.

JUSTIFICATION FOR RULE ACTION

25 TAC §475.5 Reimbursement for Travel to Meetings

The Anatomical Board of the State of Texas amends 25 TAC §475.5 related to reimbursement for travel to meetings. The proposed rule adds staff members to the list of people who may be reimbursed for travel to board meetings. The proposed rule also

requires the staff members to submit travel reimbursement requests that conform to the format and amounts claimed to similar requests of the staff member's employing parent institution.

HOW IT WILL FUNCTION:

The amendment is necessary "because, currently, the board reimburses only board members for their travel cost, leaving the member institutions to reimburse their other respective staff members" The board employs no staff designated exclusively to board functions. Instead, the board members, who each represent a Texas health occupations school that participates in the board's Willing Bodies program, will designate a staff person from one or more member institutions to carry out the administrative functions of the board. Among the staff's administrative functions are the coordination and facilitation of the annual board meeting, which duties include setting up and closing out the meeting site, transporting and managing meeting materials at and equipment to the site, and carrying out clerical and administrative duties during the meeting to support the work of the board members.

SUMMARY OF COMMENTS:

There were no comments received during the posting period.

STATUTORY AUTHORITY:

These amendments are adopted under the authority of Texas Health and Safety Code §691.007, which authorizes the Board to adopt rules for its administration.

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

Filed with the Office of the Secretary of State on October 30, 2019.

TRD-201904040

Stephen Luk

Secretary Treasurer

Anatomical Board of the State of Texas

Effective date: November 19, 2019

Proposal publication date: May 3, 2019

For further information, please call: (214) 648-5470



CHAPTER 479. FACILITIES: STANDARDS AND INSPECTIONS

25 TAC §479.3

INTRODUCTION:

The Anatomical Board of the State of Texas (Board) adopts amendments to 25 TAC §479.3, concerning the rules related to facility standards. The Board adopts these amendments without changes to the proposed text as published in the May 3, 2019, issue of the *Texas Register* (44 TexReg 2254). The amended rules will not be republished.

JUSTIFICATION FOR RULE ACTION:

25 TAC §479.3 Standards for Facilities

The Anatomical Board of the State of Texas amends 25 TAC §479.3 related to standards for facilities. The amendment adds a new subsection (b), which requires member institutions who di-

rectly accept Willd Body Program donations to employ or maintain contracts with a state licensed funeral director and state licensed embalmer. The amendment renumbers the remaining sections of the rule to accommodate the new subsection (b).

HOW IT WILL FUNCTION:

The amendments are necessary to ensure that individuals whom a member institution assigns to prepare a body or to embalm a body will comply with Texas law, which requires such activities to be carried out by a Texas licensed funeral director and a Texas licensed embalmer, respectively.

SUMMARY OF COMMENTS:

There were no comments received during the posting period.

STATUTORY AUTHORITY:

These amendments are adopted under the authority of Texas Health and Safety Code §691.007, which authorizes the Board to adopt rules for its administration; under §691.022(b), which directs the board to adopt rules to ensure that each body and anatomical specimen in the custody of the board or an institution represented by the board is treated with respect; and under §691.031 which requires proper transportation of each body or anatomical specimen received or distributed by the board.

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

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Stephen Luk

Secretary Treasurer

Anatomical Board of the State of Texas

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER A. GENERAL RULES

34 TAC §3.9

The Comptroller of Public Accounts adopts amendments to §3.9, concerning electronic filing of returns and reports; electronic transfer of certain payments by certain taxpayers, without changes to the proposed text as published in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5601). The amendments adjust the payment threshold triggering electronic payments described in subsection (b) of this section. The comptroller adds the names of statutory cites throughout the section to conform with comptroller guidelines.

The comptroller amends subsection (b) to incorporate the higher threshold of \$500,000 provided under Government Code, §404.095 (Electronic Transfer of Certain Payments), in lieu of

the lower threshold of \$100,000 found in the current section. Increasing the threshold will benefit taxpayers owing more than \$100,000 but less than \$500,000, many of whom are assessed a 5.0% penalty for not making timely State of Texas Financial Network (TexNet) payments as required under subsection (c) of this section.

The comptroller adopts new subsection (b)(1), to be effective for payments due beginning Jan. 1, 2019. Subsection (b)(1) increases from \$100,000 to \$500,000 the threshold requiring payment using TexNet. See Government Code, §404.095(e). The comptroller also adds an example to make the subsection easier to understand and renumbers subsequent paragraphs accordingly.

The comptroller amends renumbered subsection (b)(2), currently subsection (b)(1), to make conforming changes. The comptroller explains the continuing TexNet electronic payment requirement for taxpayers paying \$100,000 or more and whom the comptroller notified of this requirement for a prior calendar year.

The comptroller adopts new subsection (b)(3) to explain that effective for payments due on or after January 1, 2019, taxpayers paying \$100,000 or more, but less than \$500,000, during the state fiscal year must make electronic payments, although TexNet is not mandatory for these payments. The comptroller also adds an example to make the subsection easier to understand and renumbers the subsequent paragraph.

The comptroller amends renumbered subsection (b)(4), currently subsection (b)(2), to make conforming changes regarding continuing requirements and to make a grammatical correction. The paragraph explains that payment requirements apply during the calendar year that begins on January 1 of the fiscal year during which the comptroller determines taxpayers' payment thresholds.

The comptroller amends subsection (c)(2) to remove the word "combined" to eliminate ambiguity regarding the use of this term. Although the comptroller does not define this term, the intent of the original language was to address the submission of EDI reports in the same "enveloped file," which is a technical comptroller term. The word "combined" is unnecessary for the purpose of this subsection. The comptroller also removes the phrase "central time to meet the 6:00 p.m. central time requirement that is noted in paragraph (1) of this subsection" to remove any confusion that might arise from a reference to the TexNet deadline in subsection (c)(1). The 6:00 p.m. deadline refers to an internal process at the comptroller's office and is unnecessary for the purpose of this subsection.

No comments were received regarding adoption of the amendment.

The amendments are adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendments implement Tax Code, §111.0625 (Electronic Transfer of Certain Payments) and Government Code, §404.095.

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

Filed with the Office of the Secretary of State on October 30, 2019.

TRD-201904034

William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

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Proposal publication date: September 27, 2019

For further information, please call: (512) 475-0387



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.4

The Texas Board of Criminal Justice adopts amendments to §151.4, concerning Public Presentations and Comments to the Texas Board of Criminal Justice, without changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4847).

The adopted amendments are minor wording changes and are not substantive.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §§492.001, 492.013, 551.001-.146; Texas Penal Code §§30.06, 30.07.

Cross Reference to Statutes: None.

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

Filed with the Office of the Secretary of State on November 1, 2019.

TRD-201904079

Erik Brown

Director of Legal Affairs

Texas Department of Criminal Justice

Effective date: November 21, 2019

Proposal publication date: September 6, 2019

For further information, please call: (936) 437-6700



37 TAC §151.77

The Texas Board of Criminal Justice adopts amendments to §151.77, concerning Purchasing and Contracting with Historically Underutilized Businesses, without changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4849); therefore, the rules will not be republished.

The adopted amendments are necessary to update the subchapter because the rules of Comptroller of Public Accounts,

upon which this rule is based, were reorganized. The proposed amendments here reflect that reorganization and minor formatting changes have been made.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §§492.013, 493.012, 2161.003.

Cross Reference to Statutes: None.

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

Filed with the Office of the Secretary of State on November 1, 2019.

TRD-201904080

Erik Brown

Director of Legal Affairs

Texas Department of Criminal Justice

Effective date: November 21, 2019

Proposal publication date: September 6, 2019

For further information, please call: (936) 437-6700



CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

37 TAC §163.37

The Texas Board of Criminal Justice adopts amendments to §163.37, concerning Reports and Records, without changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4850). The rule will not be republished.

The adopted amendments reflect the recodification of the Texas Code of Criminal Procedure and otherwise the minor changes make no substantive change.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §§492.013, 509.003.

Cross Reference to Statutes: None.

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

Filed with the Office of the Secretary of State on November 1, 2019.

TRD-201904081

Erik Brown

Director of Legal Affairs

Texas Department of Criminal Justice

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Proposal publication date: September 6, 2019

For further information, please call: (936) 437-6700



PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT

CHAPTER 211. ADMINISTRATION

37 TAC §211.1

The Texas Commission on Law Enforcement (Commission) adopts the amended §211.1, concerning Definitions without changes to the proposed text as published in the May 3, 2019, issue of the *Texas Register* (44 TexReg 2255).

This amendment was necessary to specify who shall do the background investigation.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission, Rulemaking Authority.

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

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

Filed with the Office of the Secretary of State on November 1, 2019.

TRD-201904067

Kim Vickers

Executive Director

Texas Commission on Law Enforcement

Effective date: November 21, 2019

Proposal publication date: May 3, 2019

For further information, please call: (512) 936-7771



PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES SUBCHAPTER G. GENERAL PROVISIONS DIVISION 3. JUVENILE CORRECTIONAL OFFICERS

37 TAC §380.9955

The Texas Juvenile Justice Department (TJJD) adopts amendments to §380.9955, concerning Staffing Requirements for Youth Development Coaches, without changes to the proposed text as published in the September 20, 2019, issue of the *Texas Register* (44 TexReg 5384). The amended rule will not be republished.

JUSTIFICATION FOR CHANGES

The public benefit anticipated as a result of administering the section is to allow healthy and appropriate relationships to be formed between youth and direct care staff. Such relationships can further youth rehabilitation, thereby benefiting the public when youth are released.

SUMMARY OF CHANGES

The amended rule replaces the term *juvenile correctional officer (JCO)* with the term *youth development coach*.

The amended rule also removes: (1) the definitions for *extended period of time*, *station*, and *regular interval*; (2) the provision that defined when a wing or pod of a dormitory may be considered a station; and (3) the provision that prohibited a youth development coach from returning to a previously assigned station until that coach has served at least one regular interval at another station or unless given approval by the division director over residential facilities or designee.

In addition, the amended rule adds that the executive director or designee ensures assignments are rotated such that youth development coaches do not supervise the same youth for an extended period of time.

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rule-making action.

STATUTORY AUTHORITY

The amended section is adopted under: Section 242.003, Human Resources Code, which requires TJJD to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs; and Section 242.009, Human Resources Code, which establishes staffing requirements for juvenile correctional officers and requires TJJD to adopt rules to administer these requirements.

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

Filed with the Office of the Secretary of State on October 28, 2019.

TRD-201904006

Christian von Wupperfeld

General Counsel

Texas Juvenile Justice Department

Effective date: December 1, 2019

Proposal publication date: September 20, 2019

For further information, please call: (512) 490-7278



TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

SUBCHAPTER F. CONTRACTS FOR SCIENTIFIC, REAL ESTATE APPRAISAL, RIGHT OF WAY ACQUISITION, AND LANDSCAPE ARCHITECTURAL SERVICES

43 TAC §9.87

The Texas Department of Transportation (department) adopts amendments to §9.87, concerning indefinite delivery contract selection for scientific, appraisal, right of way acquisition, and landscape architectural services. The amendments to §9.87 are adopted with changes to the proposed text as published in the August 9, 2019, issue of the *Texas Register* (44 TexReg 4179) and will be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Government Code, Chapter 2254 (Professional Services Procurement Act), Subchapter A, establishes authority for the department to procure and award professional services contracts and does not cite language nor establish contract limits specific to indefinite delivery contracts. The current contract limits in §9.87 unnecessarily limit the ability to deliver transportation projects in a timely and business-driven manner.

Amendments to §9.87, Selection, make changes related to indefinite delivery contracts to closely align with statewide requirements to meet project letting demands. The amendments in subparagraph (B) remove contract amount thresholds and specify the contract amount, contract period, and work authorization issuance periods are included in the contract. Subparagraph (C) is amended to provide that work authorizations under an indefinite delivery contract are required to be issued within four years of the effective date of the contract rather than two years. These changes provide more flexibility for and help streamline the procurement process.

COMMENTS

There were a total of seven comments to the proposed rules, all regarding the negative effect on delivery of scientific contracts when used. One comment each was received from Johnson, Mirmiran and Thompson, Incorporated, and Prewitt and Associates, Incorporated. Two comments were received from Spirit Environmental. Three comments were received from Blanton and Associates, Incorporated. All seven comments regarded the delivery of scientific contracts in §9.87(3)(C).

Comment: The commenters suggested that the elimination of language relevant to scientific contracts would require scientific contract work authorizations to be completed within four years.

Response: The department disagrees with that interpretation. The proposed rules do not create such a restriction. Instead, the proposed change addresses the timeframe in which work authorizations could be issued, but does not limit the term or period of a work authorization. No change is made in response to this comment.

Comment: The commenters suggested that the removal of language relevant to scientific contracts in the proposed rules eliminates the department's ability to issue scientific contract work authorizations for tasks or subtasks beyond the four year period as established in the proposed changes.

Response: The department agrees and acknowledges the need for the ability to issue work authorizations for scientific contract work on the same project beyond the previously proposed time frame of four years. The rules have been changed from the proposal to retain an exception for scientific work authorizations but

revises the language to align with the four-year time frame for initial work authorizations under this section.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Government Code, Chapter 2254, Subchapter A.

§9.87. Selection.

The department will perform three types of contract selections.

(1) Individual contract selection. One contract will result from the contract notice.

(2) Multiple contract selection. More than one contract, of similar work types and estimated amounts, will result from the contract notice. The notice will indicate the number and type of contracts to result from the advertisement, and specify a range of scores for providers that will be considered qualified to perform the work.

(3) Indefinite delivery contract selection.

(A) This contract selection may be for award of contracts to single or multiple providers to perform work under a general scope of services.

(B) The type of work will be described in the contract. Specific services shall be authorized by individual work authorizations on an as-needed basis. The maximum contract amount, contract period, and work authorization issuance period shall be specified in the contract.

(C) All work authorizations under an indefinite delivery contract shall be issued within four years of the effective date of the contract, except for scientific services. For scientific services, the initial work authorization for any specific project must be issued within four years. The work authorization for tasks or subtasks within the specific project may be issued after the initial four years, provided that the task or subtask does not initiate a new project.

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

Filed with the Office of the Secretary of State on October 31, 2019.

TRD-201904044

Becky Blewett

Deputy General Counsel

Texas Department of Transportation

Effective date: November 20, 2019

Proposal publication date: August 9, 2019

For further information, please call: (512) 463-8630

