

The Texas Commission on Environmental Quality (TCEQ, agency, commission) adopts the amendments to §§30.24, 30.26 and 30.33.

The amendments to §§30.24, 30.26, and 30.33 as published in the March 23, 2012, issue of the *Texas Register* (37 TexReg 2003) are adopted *without changes* to the proposed text and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The adopted rules implement requirements in House Bill (HB) 965, 82nd Legislature, 2011, relating to Class A and B Public Water System Operators and Class A and B Wastewater Treatment Facility Operators being able to certify, when they renew their license, that they have complied with the commission's continuing education requirements. The adopted rules also implement requirements in HB 1674, 82nd Legislature, 2011, relating to the issuance or renewal of a license or registration for applicants who have failed to pay child support for six months or more. Additionally, the adopted rules implement requirements in Senate Bill (SB) 1733, 82nd Legislature, 2011, relating to issuance of a license to an applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States and holds a current license issued by another state that has licensing requirements that are substantially equivalent to the requirements of the agency.

This adopted rulemaking will allow Class A and B Public Water System Operators and Class A and B Wastewater Treatment Facility Operators, to certify, when they renew their license, that they have complied with the commission's continuing education requirements. The continuing education options include, but are not limited to, internet based continuing education programs for occupational licenses approved by the TCEQ.

This adopted rulemaking also requires that, upon notification from a child support agency, the commission refuse to accept an application for issuance of a new license or registration, as well as an application for the renewal of an existing license or registration of an applicant who has failed to pay child support for six months or more.

This adopted rulemaking will authorize the commission to charge a fee in an amount sufficient to recover the administrative costs incurred for denying or suspending that license.

Finally, this rulemaking will allow the commission to issue a license to an applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States and holds a current license issued by another state that has licensing requirements that are substantially equivalent to the requirements for the license issued and regulated by the TCEQ. This rulemaking will also allow the agency to issue a license to an applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States and, within the five years preceding the application

date, held the license in this state that expired while the applicant lived in another state for at least six months. The rulemaking will also include provisions to allow alternative demonstrations of competency to meet the requirements for obtaining a license.

Section by Section Discussion

Subchapter A, Administration of Occupational Licenses and Registrations

The adopted amendment to §30.24, License and Registration Applications for Renewal, will allow Class A and B Public Water System Operators and Wastewater Treatment Operators, to certify at the time they renew their license that they have complied with the commission's continuing education requirements. These continuing education options include, but are not limited to, internet based continuing education programs for occupational licenses approved by the TCEQ.

The adopted amendment to §30.26, Recognition of Licenses from Out-of-State, will allow the commission to issue a license to an applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States and holds a current license issued by another state that has licensing requirements that are substantially equivalent to the requirements for the license issued and regulated by the TCEQ. The adopted amendment will also allow the commission to issue a license to an applicant who was previously licensed in Texas, but whose license expired while they lived in another state for at least six months. To obtain a license under this provision the

applicant must have been licensed in Texas during the five years preceding their application for a new license. The amendment also includes provisions that allow an applicant to use an alternative demonstration of competency to meet the requirements for obtaining a license.

The adopted amendment to §30.33, License or Registration Denial, Warning, Suspension, or Revocation requires that, if the commission is notified by a child support agency that an individual has failed to pay child support for six months or more, the commission must refuse to accept an applicant's application for a new license, registration or renewal of an existing license. The adopted amendment will also authorize the commission to charge a fee in an amount sufficient to recover the administrative costs incurred for denying or suspending a license.

Final Regulatory Impact Determination

The commission reviewed this rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rules are not subject to that statute. Texas Government Code, §2001.0225 applies only to rules that are specifically intended to protect the environment or reduce risks to human health from environmental exposure. The intent of the adopted rules are to allow Class A and B Public Water System Operators and Class A and B Wastewater Treatment Facility Operators to certify that they have complied with the commission's continuing

education requirements when they renew their licenses; provide special provisions to allow spouses of active duty members of the armed forces obtain occupational licenses based on a license from another state or an expired Texas occupational license; or by demonstrating competency through an alternative method. Finally, the adopted amendments will require that, if the commission is notified by a child support agency that an individual has failed to pay child support for six months or more, the commission must refuse to accept an applicant's application for a new license or renewal of an existing license and would also authorize the commission to charge a fee in an amount sufficient to recover the administrative costs incurred for denying or suspending a license. The adopted rules are not specifically intended to protect the environment or reduce risk to human health from environmental exposure, but rather the intent of the adopted rules are to implement new regulations for the agency's licensing and registration programs that are necessary to ensure more consistent operation and enforcement among the licensing and registration programs that the agency administers. The adopted rules will not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Thus, the adopted rules do not meet the definition of "a major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3), and thus, do not require a full regulatory impact analysis.

Furthermore, the adopted rules do not meet any of the four applicability requirements

listed in Texas Government, §2001.0225(a). Texas Government Code, §2001.0225 applies only to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) is adopted solely under the general powers of the agency instead of under a specific state law.

There are no federal standards regulating occupational licensing; however, if there were, these rules are specifically required by HB 965, HB 1674, and SB 1733. These rules do not exceed state law requirements, and state law requires their implementation, not federal law. There are no delegation agreements or contracts between the State of Texas and an agency or representative of the federal government to implement a state and federal program regarding occupational licensing. And finally, these rules are being adopted under specific state laws, in addition to the general powers of the agency.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. There were no public comments received regarding the draft regulatory impact analysis determination during the public comment period.

Takings Impact Assessment

The commission evaluated these adopted rules and performed an assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007. The purpose of the adopted rules is to ensure consistency between the rules and their applicable statutes. Promulgation and enforcement of these adopted rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations do not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These adopted rules make legislatively mandated changes to the existing rules and the adopted new regulations do not affect private real property.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. There were no public comments received regarding the consistency with the coastal management program during the public comment period.

Public Comment

The commission held a public hearing on April 12, 2012. The comment period closed on April 23, 2012. The commission received a comment from the Texas Association of Clean Water Agencies (TACWA). TACWA supported adoption of the rules as proposed.

Response to Comment

Comments to Subchapter A: Administration of Occupational Licenses and Registrations

Comment

In regards to the proposed revisions to Subchapter A, TACWA commented that it supported the commission's full adoption of the rules as published in the *Texas Register* on March 23, 2012. In particular, the amendments to Subchapter A, §30.24, that implements HB 965.

Response

The commission acknowledges support of the rules by TACWA. The

commission made no changes to the rules in response to this comment.

**SUBCHAPTER A: ADMINISTRATION OF OCCUPATIONAL
LICENSES AND REGISTRATIONS**

§§30.24, 30.26, 30.33

Statutory Authority

These amendments are adopted under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, concerning Rules, which requires the commission to adopt rules necessary to carry out its powers and duties; TWC, §5.105, which provides the commission with the authority to establish and approve all general policy of the commission by rule; TWC, §37.002, concerning Rules, which provides that the commission with the authority to adopt rules for various occupational licenses; TWC, §37.003, concerning License or Registration Required, which provides that persons engaged in certain occupations must be licensed by the commission; TWC, §37.005, concerning Issuance and Denial of Licenses and Registration, which requires the commission to establish requirements and uniform procedures for issuing licenses and registrations; TWC, §37.006, concerning Renewal of License or Registration, which requires the commission establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.008, concerning Training; Continuing Education, which provides that the commission shall approve

training programs necessary to qualify for or renew a license; TWC, §37.009 concerning Fees, which provides the commission with the authority to establish and collect fees to cover the cost administering and enforcing the provisions of TWC, Chapter 37; Texas Family Code, §232.0135, concerning Denial of License Renewal, which provides that a child support agency may require that a licensing authority refuse to accept an application for a license renewal for certain individuals; Texas Family Code, §232.014(a), concerning Fee by Licensing Authority, which allows the agency to charge a fee in an amount sufficient to recover the administrative costs incurred for denying or suspending that license; and Texas Occupations Code, §55.004, concerning Alternative License Procedure for Military Spouse, which provides that state agencies must provide for alternative methods to license military spouses.

The adopted rules implement requirements in House Bill (HB) 965, 82nd Legislature, 2011, which amended TWC, §37.008; HB 1674, 82nd Legislature, which amended Texas Family Code, §232.0135 and §232.014; and Senate Bill 1733, 82nd Legislature, 2011, which amended Texas Occupations Code, §55.004.

§30.24. License and Registration Applications for Renewal.

(a) A license or registration may not be renewed if it has been:

(1) expired for more than 30 days and an application has not been received by the executive director or postmarked within 30 days after the expiration date of the license or registration;

(2) revoked; or

(3) replaced by a higher class of license.

(b) Applications for renewal must be made on a standard form provided by the executive director.

(1) The executive director shall mail a renewal application at least 60 days before the license or registration expires to the most recent address provided to the executive director. If a person does not receive a renewal application, the person is not relieved of the responsibility to timely submit a renewal application.

(2) The person is responsible for ensuring that the completed renewal application, the renewal fee, and other required information are submitted to the executive director by the expiration date of the license or registration.

(c) All statements, qualifications, and attachments provided by the applicant that relate to a renewal application shall be true, accurate, complete, and contain no misrepresentation or falsification.

(d) The continuing education which includes, but is not limited to, classroom and training programs made available through the internet used to renew a license must be successfully completed after the issuance date and before the expiration date of the current license. Any training credits completed in excess of the amount required for the renewal period shall not be carried over to the next renewal period.

(e) An individual who holds a license prescribed by Texas Water Code, §26.0301, or Texas Health and Safety Code, §341.033 or §341.034, specifically the holder of a Class A or Class B public water system operator or Class A or B wastewater treatment facility operator license may certify compliance with continuing education requirements prior to or at the time the license is renewed by submitting a continuing education certification form available from the executive director.

(f) The executive director may renew a license or registration if the application is received by the executive director or is postmarked within 30 days after the expiration date of the license or registration, and the person meets the requirements for renewal by the expiration date of the license or registration and pays all appropriate fees. This

subsection does not extend the validity period of the license or registration nor grant the person authorization to perform duties requiring a license or registration. This subsection only allows an additional 30 days after the expiration of the license or registration for the person to submit the renewal application, any supporting documentation, and appropriate fees.

(g) An individual whose license renewal application is not received by the executive director or is not postmarked within 30 days after the license expiration date may not renew the license and must meet the current education, training, and experience requirements, submit a new application with the appropriate fee, and pass the examination. A person whose registration renewal application is not received by the executive director or is not postmarked within 30 days after the expiration date may not renew the registration and must submit a new application with the appropriate fee and meet all applicable requirements for a new registration.

(h) Persons failing to renew their license or registration in a timely manner due to serving on active duty in the United States armed forces outside this state may renew their license within 180 days of returning from active duty by submitting the following:

(1) a completed renewal application;

(2) a copy of the military orders substantiating the military service during the time the license expired; and

(3) the applicable license renewal fee.

(i) For good cause the executive director may extend the 180-day period for individuals serving on active duty in the United States armed forces outside this state seeking to renew their license. Good cause may include, but is not limited to, hospitalization or injury to the licensee.

(j) Completion of the required continuing education will be waived for the renewal cycle while the licensee was on active duty service in the United States armed forces outside this state.

(k) These procedures apply only to individuals on active duty service in the United States armed forces outside this state and not to military contractors.

(l) All licensees must notify the executive director of any change in the previously submitted application information within ten days from the date the change occurs.

(m) All registration holders must notify the executive director of any change in the previously submitted application information within ten days after the month in which the change occurs.

(n) Licenses and registrations that have renewal cycles in transition shall follow the renewal requirements in the applicable subchapter.

(o) The executive director shall determine whether an applicant meets the renewal requirements of this subchapter. If all requirements have been met, the executive director shall renew the license or registration and send it to the applicant within 45 days after the date the executive director receives the renewal application.

(p) The license or registration shall be valid for the term specified.

(q) If the application does not meet the requirements, the executive director shall notify the applicant in writing of the deficiencies within 45 days after the date the executive director receives the renewal application.

(r) All deficiencies must be corrected within 30 days of date printed on the notification, or the renewal application shall be considered void after the license expiration date.

(s) A person whose license or registration has expired shall not engage in activities that require a license or registration until the license or registration is renewed or a new license or registration has been obtained.

§30.26. Recognition of Licenses from Out-of-State.

(a) Except for landscape irrigators the executive director may waive qualifications, training, or examination for individuals with a good compliance history who hold a current license from another state, territory, or country if that state, territory, or country has requirements equivalent to those in this chapter.

(b) A license may be issued after review and approval of the application, receipt of the appropriate fee, and verification of the license from the corresponding state, territory, or country.

(c) The executive director may waive any of the prerequisites for obtaining a landscape irrigator or installer license, if the applicant is licensed as an irrigator in another jurisdiction that has a reciprocity agreement with the State of Texas.

(d) The executive director may require the applicant to provide information about other occupational licenses and registrations held by the person, including:

(1) the state in which the other license or registration was issued;

(2) the current status of the other license or registration; and

(3) whether the other license or registration was ever denied, suspended, revoked, surrendered, or withdrawn.

(e) The executive director shall issue a license to an applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States and:

(1) holds a current license issued by another state that has licensing requirements that are substantially equivalent to the requirements for the license; or

(2) within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months.

(f) In lieu of the standard method(s) of demonstrating competency for a particular license, and based on the applicant's circumstances, the alternative methods

for demonstrating competency may include, but not be limited to, any combination of the following as determined by the executive director:

(1) education;

(2) continuing education;

(3) examinations (written, practical, or a combination of written and practical);

(4) letters of good standing;

(5) letters of recommendation;

(6) work experience; or

(7) other methods or options as determined by the executive director.

§30.33. License or Registration Denial, Warning, Suspension, or Revocation.

(a) The executive director may deny an initial or renewal application for the following reasons.

(1) Insufficiency. The executive director shall notify the applicant of the executive director's intent to deny the application and advise the applicant of the opportunity to file a motion for reconsideration under §50.39 of this title (relating to Motion for Reconsideration). The executive director may determine that an application is insufficient for the following reasons:

(A) failing to meet the licensing or registration requirements of this chapter; or

(B) if an out-of-state licensing program does not have requirements substantially equivalent to those of this chapter.

(2) Cause. After notice and opportunity for a hearing, the commission may deny an application for a license or registration by an applicant who:

(A) provides fraudulent information or falsifies the application;

(B) has engaged in fraud or deceit in obtaining or applying for a license or registration;

(C) has demonstrated gross negligence, incompetence, or misconduct in the performance of activities authorized by a license or registration;

(D) made an intentional misstatement or misrepresentation of fact or information required to be maintained or submitted to the commission by the applicant or by the license or registration holder;

(E) failed to keep and transmit records as required by a statute within the commission's jurisdiction or a rule adopted under such a statute;

(F) at the time the application is submitted, is indebted to the state for a fee, penalty, or tax imposed by a statute within the commission's jurisdiction or a rule adopted under such a statute;

(G) is in default on loans guaranteed by Texas Guaranteed Student Loan Corporation (TGSLC) (the executive director shall proceed as described in Texas Education Code, Chapter 57) if identified by TGSLC and the application is for a renewal license or registration; or

(H) has been convicted of:

(i) an offense that directly relates to the duties and responsibilities of the licensed occupation;

(ii) an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the applicant applies for the license;

(iii) an offense listed in Code of Criminal Procedure, Article 42.12, Section 3g; or

(iv) a sexually violent offense, as defined by Code of Criminal Procedure, Article 62.001.

(b) If a person causes, contributes to, or allows a violation of this chapter, the executive director may issue a warning letter. The letter shall be placed in the person's permanent file maintained by the executive director. This letter shall be a warning that further violations or offenses by the person may be grounds for suspension, revocation, enforcement action, or some combination. A warning is not a prerequisite for initiation of suspension, revocation, or enforcement proceedings.

(c) After notice and hearing, the commission may suspend or revoke a license, certificate, or registration on any of the grounds contained in Texas Water Code, §7.303(b).

(d) After notice and hearing, the commission may suspend or revoke a license on the grounds that the individual has been convicted of:

(1) an offense that directly relates to the duties and responsibilities of the licensed occupation;

(2) an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the individual applies for the license;

(3) an offense listed in Code of Criminal Procedure, Article 42.12, Section 3g; or

(4) a sexually violent offense, as defined by Code of Criminal Procedure, Article 62.001.

(e) The commission shall revoke the license or registration upon an individual's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(f) Except as provided by subsection (g) of this section, notwithstanding any other law, the executive director may not consider an individual to have been convicted of an offense for purposes of this section if, regardless of the statutory authorization:

(1) the individual entered a plea of guilty or nolo contendere;

(2) the judge deferred further proceedings without entering an adjudication of guilt and placed the individual under the supervision of the court or an officer under the supervision of the court; and

(3) at the end of the period of supervision, the judge dismissed the proceedings and discharged the individual.

(g) The executive director may consider an individual to have been convicted of an offense for purposes of this section regardless of whether the proceedings were dismissed and the individual was discharged as described by subsection (f) of this

section if, after consideration of the factors described by Texas Occupations Code, §53.022 and §53.023(a), the executive director determines that:

(1) the individual may pose a continued threat to public safety; or

(2) employment of the individual in the licensed occupation would create a situation in which the individual has an opportunity to repeat the prohibited conduct.

(h) After notice and hearing, the commission may revoke a maintenance provider registration on any of the grounds in Texas Health and Safety Code, §366.0515(m).

(i) Failure to pay child support.

(1) The commission may suspend a license or registration if a licensed or registered individual has been identified by the Office of the Attorney General as being delinquent on child support payments (upon receipt of a final order suspending a license or registration, the executive director shall proceed as described in Texas Family Code, Chapter 232).

(2) The commission shall refuse to accept an application for:

(A) issuance of a new license or registration to an individual; or

(B) renewal of an existing license or registration to an individual if:

(i) the individual has failed to pay child support for six months or more;

(ii) the commission is notified by a child support agency, as defined by Texas Family Code, §101.004; and

(iii) the child support agency requests the commission to refuse to accept the application.

(3) The commission shall not accept an application for a license that was refused under paragraph (2) of this subsection until notified by the child support agency that the individual has:

(A) paid all child support arrearages;

(B) established with the child support agency a satisfactory repayment schedule or is in compliance with a court order for payment of the arrearages;

(C) been granted an exemption from this subsection as part of a court-supervised plan to improve the individual's earnings and child support payments;
or

(D) successfully contested the child support agency's request for the commission's denial of issuance or renewal of the license or registration.

(4) The commission may charge a fee in an amount sufficient to recover the administrative costs incurred for denying or suspending that license.

(j) The suspension period for a license or registration suspended in accordance with subsection (i) of this section shall be until:

(1) the court or the Title IV-D agency renders an order vacating or staying an order suspending the license or registration; or

(2) the expiration of the license or registration.

(k) After notice and hearing a license or registration may be suspended for a period of up to one year, depending upon the seriousness of the violations. A license or registration shall be revoked after notice and hearing upon a second suspension.

(l) The commission may revoke a license or registration after notice and hearing for a designated term or permanently. If a license or registration is revoked a second time, the revocation shall be permanent.

(m) The following procedures for renewal apply to persons that have had their license or registration suspended.

(1) If a license or registration expiration date falls within the suspension period, a person may renew the license or registration during the suspension period according to §30.24 of this title (relating to License and Registration Applications for Renewal) and the applicable subchapters.

(2) A license or registration suspended in accordance with subsection (i) of this section may not be renewed during the suspension period. The license or registration may only be renewed if the court or the Title IV-D agency renders an order

vacating or staying an order suspending the license or registration and the license or registration has not expired during the suspension period.

(3) After the suspension period has ended, the license or registration shall be automatically reinstated unless the person failed to renew the license or registration during the suspension period.

(n) Persons that have had their license or registration revoked shall not have their license or registration reinstated after the revocation period. After the revocation period has ended, a person may apply for a new license or registration according to this chapter.