

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§30.5, 30.7, 30.14, 30.18, 30.20, 30.24, 30.26, 30.28, 30.30, and 30.36, and the simultaneous repeal and adoption of new §30.33.

Sections 30.5, 30.7, 30.14, 30.24, 30.26, 30.28, 30.30, 30.33, and 30.36 are adopted *without changes* to the proposed text as published in the February 14, 2014, issue of the *Texas Register* (39 TexReg 899) and will not be republished. Sections 30.18 and 30.20 are adopted *with changes* to the proposed text and will be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The adopted rules implement requirements in House Bills (HB) 798, 1302, 1659, 1846, and in Senate Bill (SB) 162, 83rd Legislature, 2013. These bills impact Chapter 30, Subchapter A.

The adopted rules will enable the commission to: exclude Class C misdemeanor convictions when reviewing applications for occupational licenses as required by Texas Occupations Code, Chapter 53, Consequences of Criminal Conviction, amended by HB 798; prohibit certain registered sex offenders from providing services in a person's residence unless supervised, as required by Texas Code of Criminal Procedure, Chapter 62, Sex Offender Registration Program, amended by HB 1302; consider individuals charged with certain offenses to have been convicted of an offense for purposes of this subchapter,

regardless of whether the proceedings were dismissed, as required by Texas Occupations Code, Chapter 53, amended by HB 1659; suspend or refuse the application of an individual who has not made a minimum payment of child support as required by Texas Family Code, Chapter 232, Suspension of License, amended by HB 1846; recognize verified military service, training, or education from military service members and military veterans when considering occupational licensing applications as required by Texas Occupations Code, Chapter 55, License While on Military Duty and for Military Spouses, amended by SB 162; and expedite occupational licensing applications from military spouses as required by Texas Occupations Code, Chapter 55, License While on Military Duty and for Military Spouses, amended by SB 162.

The adopted rules will: add relevant statutory citations, remove redundant citations, and remove citations which no longer pertain to occupational licenses due to historical legislative statutory changes; adjust timelines due to increased processing and evaluation time resulting from criminal history background checks required by HB 963 from the 81st Legislature, 2009; provide a uniform wait time between examinations for individuals who re-take a paper examination or a computer-based examination; clarify the validity period for examinations; incorporate a new training delivery method which utilizes current technology; establish a fee for review of this new training delivery method; provide consistency within the chapter by including a two-year validity period for licenses and registrations; and improve readability of rules by removing redundant wording and

making non-substantive changes to grammar, punctuation, and organization.

The adopted rulemaking will also repeal and simultaneously adopt new §30.33 in order to reorganize the section to improve readability by the public. Adopted new §30.33 will also add requirements relating to: convictions for Class C misdemeanors as required by Texas Occupations Code, Chapter 53, amended by HB 798; prohibited employment for individuals subject to registration for certain convictions under Texas Code of Criminal Procedure, Chapter 62, Sex Offender Registration Program, amended by HB 1302; individuals charged with certain offenses, regardless of whether the proceedings have been dismissed, to be considered to have convictions under Texas Occupations Code, Chapter 53, amended by HB 1659; and child support obligations of applicants under Texas Family Code, Chapter 232, amended by HB 1846.

Section by Section Discussion

In addition to the adopted amendments associated with this rulemaking, various stylistic, non-substantive changes are included to update rule language to current Texas Register style and format requirements. Such changes ensure appropriate and consistent use of acronyms, section references, rule structure, and terminology. These changes are non-substantive and are not specifically discussed in this preamble.

§30.5, General Provisions

The adopted amendment to §30.5 would incorporate the employment prohibitions and supervision requirements for individuals with certain reportable convictions from HB 1302 by adding subsection (f). Additionally, the adopted amendment would add relevant statutory citations, remove redundant citations, and remove citations that, due to legislative changes, no longer pertain to occupational licenses issued by the commission.

§30.7, Definitions

The adopted amendment to §30.7 would remove out-of-date terminology and update the licensing training methods to reflect the availability of new technology by including a definition for webinar. The adopted amendment would remove the specific examples of CD-ROM courses and on-line education from the definition of distance learning in order to reflect changing technology. Similarly, the adopted rule would remove outdated examples of compact disks and digital video disks from the definition of technology-based training, as these delivery methods continue to evolve. The adopted rule would add the definition of webinar in order to distinguish live interactive training classes from other technology-based training methods.

§30.14, Applications for Initial Registration

The adopted amendment to §30.14 would remove the 45-day deadline from the rule to acknowledge the increased processing and evaluation time for the additional criminal history background checks required by HB 963 from the 81st Legislature, 2009. Evaluation

of applicants' criminal history helps to ensure public safety by denying certain occupational licenses to certain individuals. Legislative changes require increased criminal history background evaluation for each application. In some cases, the increased evaluation requirements add an additional 21 - 24 days to the review process. Internal policy would ensure application processing is continued to be done in a timely manner. The removal of this unsupported deadline from the rule would ensure that staff can perform criminal history evaluations completely and correctly. The adopted rule would also replace the reference to the licensing and registration validity term in §30.30 with a reference to the validity terms specified in Chapter 30, Subchapters B - L in order to reflect differing terms for certain types of licenses and registrations.

§30.18, Applications for an Initial License

The adopted amendment to §30.18 would remove the 45-day deadline from the rule to acknowledge the increased processing and evaluation time for the additional criminal history background checks required by HB 963 from the 81st Legislature, 2009. Evaluation of applicants' criminal history helps to ensure public safety by denying certain occupational licenses to certain individuals. Legislative changes require increased criminal history background evaluation for each application. In some cases, the increased evaluation requirements add an additional 21 - 24 days to the review process. Internal policy would ensure application processing is continued to be done in a timely manner. The removal of this unsupported deadline from the rule would ensure that staff can perform criminal

history evaluations completely and correctly. The adopted rule would also replace the reference to the license and registration validity term in §30.30 with a reference to the validity terms specified in Chapter 30, Subchapters B - L in order to reflect differing terms for certain types of licenses and registrations. Additionally this section was modified to include applications for clarity.

§30.20, Examinations

The adopted amendment to §30.20 would clarify that Class C misdemeanor convictions are not considered convictions when reviewing applications as specified by HB 798. The adopted rule would also grant the executive director authority to consider an individual charged with certain offenses, even if the proceedings have been dismissed, to have a conviction as provided by HB 1659. Additionally, the 60-day waiting period for individuals failing paper examinations would be removed to address the current inconsistent waiting times between paper and computer examinations. The adopted removal of this waiting period would allow individuals to re-take examinations, become licensed, and gain employment more quickly. The adopted rule would remove the subsection prohibiting an individual from taking the same examination more than four times within 365 days. These removals would reflect that it is not the commission's role to dictate how often an individual may take an examination or how long an individual must wait or study between examinations. The adopted rule language would prohibit an individual who fails an examination from taking a repeat examination until the individual receives notification of

results from the previously attempted examination. This new time requirement would apply to both computer-based and paper testing methods. Additional amendments would clarify that the validity period for an application is limited to 365 days or four attempts, whichever comes first. Additionally this section was modified to include a new application for clarity.

§30.24, License and Registration Applications for Renewal

The adopted amendment to §30.24 would remove the 45-day deadline from the rule to acknowledge the increased processing and evaluation time for the additional criminal history background checks required by HB 963 from the 81st Legislature, 2009. Evaluation of applicants' criminal history helps to ensure public safety by denying certain occupational licenses to certain individuals. Legislative changes require increased criminal history background evaluation for each application. In some cases, the increased evaluation requirements add an additional 21 - 24 days to the review process. Internal policy would ensure application processing is continued to be done in a timely manner. The removal of this unsupported deadline from the rule would ensure that staff can perform criminal history evaluations completely and correctly.

*§30.26, Recognition of Licenses from Out-of-State; Licenses for Military Spouses;
Military Services Members; Military Veterans*

The adopted amendment to §30.26, would change the heading to include military spouses,

military service members, and military veterans to reflect changes made by SB 162. Also, the adopted rule would incorporate changes related to military spouses' application processing, licensing term, and notification requirements from SB 162. Finally, the adopted amendment would require the executive director to credit verified military service, training, or education toward licensing requirements and identify exceptions for examination requirements, holders of restricted licenses, or unacceptable criminal histories as specified by SB 162.

§30.28, Approval of Training

The adopted amendment to §30.28 would add the requirement that technology-based training provide criteria for successful training completion. The adopted changes would also add a new subsection relating to webinar training, webinar training providers, and webinar training materials under the commission's authority to establish uniform procedures for training granted by Texas Water Code (TWC), §37.008. These new subsections would provide requirements and exemptions for training providers who choose to provide webinar presentations for continuing education courses. Webinars are different from other forms of technology-based training in that they deliver live training via the Internet rather than previously-recorded sessions, and allow for a greater amount of interaction between the instructor and students. Webinars are widely available and are valuable methods of providing course instruction. Webinars may not be substituted for courses required to meet the educational requirements for obtaining an initial license.

Because applicants must be present in the classroom to learn extensive hands-on skill required by many basic licensing courses, the use of webinar presentations for training is effectively limited to continuing education courses. The entities identified to deliver webinars are consistent with those for both conferences and distance education. The adopted rule would also amend the training fee schedule to specify the costs to training providers for a webinar course review and subsequent applications. Additionally, the adopted rule would change "should" to "must." This adopted change would clarify the commission's intent that individuals must comply with the requirements in this section.

§30.30, Terms and Fees for Licenses and Registrations

The adopted amendment to §30.30 would include language providing exceptions to the three-year validity term for licenses and registrations as specified by Subchapters B - L. This language would be amended to be consistent with rule language found in Chapter 30, Subchapter F, which provides a two-year validity period for provisional Municipal Solid Waste Facility Supervisor licenses.

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

The adopted rulemaking would repeal and simultaneously propose adopt §30.33 to reorganize the section in order to improve readability and flow. The current structure of the section does not follow a logical order and does not allow for clean incorporation of required statutory language. The adopted new section would reorganize the content to

incorporate the Class C misdemeanor conviction exemption from HB 798, the employment prohibitions and supervision requirements from HB 1302, the consideration of a dismissal of proceedings for individuals charged with certain offenses, as a conviction, as provided by HB 1659, and the child support payment requirements from HB 1846. The reorganization would include substantive statutory changes and would create a more logical flow.

The adopted changes would specify the criminal convictions for which the commission may deny, suspend, or revoke a license or registration. The adopted rule would define residence and supervision for purposes of the prohibited employment and supervision requirements in HB 1302. The adopted changes, in accordance with HB 1659, would identify when individuals charged with certain offenses where the proceedings have been dismissed would be considered convicted of an offense under this section. The adopted rule would allow the commission to accept applications for licenses from applicants who are delinquent in child support payments but who have made an immediate payment of not less than \$200 toward the owed arrearages and established a repayment schedule with the child support agency as required by HB 1846.

Adopted new §30.33(a) would specify when the executive director may deny an initial or renewal application for a license or registration. The language remains largely the same as in the current subsection; however, the adopted rulemaking would move language in existing §30.33(a)(2)(H) to adopted new §30.33(h). Additionally, the citation to a motion

for reconsideration has been updated to refer to a motion to overturn the executive director's decision as described by 30 TAC §50.139, Motion to Overturn Executive Director's Decision. Section 50.139 applies to applications submitted on or after September 1, 1999.

Adopted new §30.33(b) would allow the executive director to issue a warning letter if an individual causes, contributes to, or allows a violation of this chapter. The adopted rule would make no substantive change to this subsection.

Adopted new §30.33(c) would allow the commission, after notice and hearing, to suspend or revoke a license, certificate, or registration on any grounds contained in TWC, §7.303(b). The adopted rule would make no substantive change to this subsection.

Adopted new §30.33(d) would allow a license or registration to be suspended, after notice and hearing, for a period of up to one year and require that a license or registration be revoked upon a second suspension. The adopted rule would move existing §30.33(k) to a different location within the section but would make no substantive change to the existing language in this subsection.

Adopted new §30.33(e) would allow the commission to revoke a license or registration, after notice and hearing, for a designated time period or permanently and would require

the second revocation of a license or registration to be permanent. The adopted rule would move existing §30.33(l) to a different location within the section but would make no substantive change to the existing language in this subsection.

Adopted new §30.33(f) would designate procedures for renewal of suspended licenses or registrations. The adopted rule would move existing §30.33(m) to a different location within the section but would make no substantive change to the existing language in this subsection.

Adopted new §30.33(g) would specify that revoked licenses and registrations shall not be reinstated after the revocation period and that, after the revocation period has ended, an individual may apply for a new license or registration under this chapter. The adopted rule would move existing §30.33(n) to a different location within the section but would make no substantive change to the existing language in this subsection.

Adopted new §30.33(h) would specify for which types of convictions the commission may deny, suspend, or revoke a license as listed in existing §30.33(a)(2)(H). The adopted rule would require the commission to revoke a license or registration upon specific events relating to an individual's criminal conviction as listed in existing §30.33(e). Adopted §30.33(h) would also specify what constitutes a conviction for an offense for the purposes of this section as listed in existing §30.33(g), as well as when an individual may not be

considered to be convicted of an offense for the purposes of this section as listed in existing §30.33(f). The adopted rule would add language to adopted §30.33(h)(1) exempting Class C misdemeanors from the criminal convictions for which the commission may deny, suspend, or revoke a license in accordance with changes mandated in HB 798. The adopted rule would also add language to adopted §30.33(h)(3) prohibiting certain registered sex offenders, from providing any type of service in the residence of another person unless supervised, and defines residence and supervision for purposes of this subsection, in accordance with HB 1302. The adopted rule would also add new language to adopted §30.33(h)(5) to specify that an individual charged with certain offenses, who has received a dismissal of proceedings will be considered convicted of an offense for the purposes of this section in accordance with HB 1659.

Adopted new §30.33(i) would specify that, after notice and hearing, the commission may revoke a maintenance provider registration on any of the grounds listed in Texas Health and Safety Code, §366.0515(m). The adopted rule would move existing §30.33(h) to a different location within the section but would make no substantive change to the existing language in this subsection.

Adopted new §30.33(j) would grant the commission authority to suspend a license or registration upon an individual's failure to pay child support as specified in existing §30.33(i)(1). The adopted rule would also require the commission to refuse to accept an

application for issuance or renewal of a license or registration if the individual has failed to pay child support for six months or more, or if the child support agency notifies and requests that the commission refuse to accept the application as required by existing §30.33(i)(2). The adopted rule would require the child support agency to notify the commission that an individual has performed one of multiple listed remedial actions before the commission may accept an application that was refused under this subsection, as required by existing §30.33(i)(3). The adopted rule would allow the commission to charge a fee sufficient to recover the administrative costs incurred for denying or suspending the license, as allowed by existing §30.33(i)(4). The adopted rule would also add language allowing the commission to accept an application for a license that was refused under this subsection if notified by the child support agency that the applicant has made an immediate payment of not less than \$200 toward child support arrearages owed and established a satisfactory repayment schedule for the remainder or is in compliance with a court order for payment, as required by HB 1846.

Adopted new §30.33(j)(5) would establish the suspension periods for a license or registration suspended for failure to pay child support. The adopted rule would move existing §30.33(j) to a new location within the section but would make no substantive change to the existing language in that subsection.

§30.36, Notice

The adopted amendment to §30.36 would remove redundant words from the subsections to improve the readability of the rule.

Final Regulatory Impact Analysis 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 because the adopted rules do not meet the criteria for "major environmental rules" as defined in Texas Government Code, §2001.0225(g)(3).

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 and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. During the 83rd Legislature, 2013, SB 162, HB 798, HB 1302, HB 1659, and HB 1846 were passed which added to and amended provisions of the occupational licensing and registration programs administered by the TCEQ.

The specific intent of the adopted rules is: to ensure consistency between the rules and their applicable statutes as amended by recent legislation; to address the procedure for granting licenses to military spouses; to credit verified military service and training of military service members or veterans toward licensing requirements; to exempt Class C misdemeanors from the types of offenses considered to be convictions; to prohibit certain

registered sex offenders from providing services in a person's residence unless supervised; to designate when an individual who has been charged with certain offenses where the proceedings have been dismissed may be considered to have a criminal conviction; to allow for new and evolving types of training methods; to address child support obligations an applicant must meet prior to issuance of a license or registration; to make grammatical and punctuation corrections; and to modify, reorganize, or add language to improve readability and enhance enforceability.

The adopted rules would clarify and update the agency's licensing and registration programs and would not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the adopted rules would only modify existing licensing and registration requirements. Therefore, the adopted rules do not meet the definition of a major environmental rule as defined in Texas Government Code, §2001.0225(g)(3).

Furthermore, even if the adopted rules did meet the definition of a major environmental rule, the adopted rules are not subject to Texas Government Code, §2001.0225, because they do not meet any of the four applicability requirements specified in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) applies to rules adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule

is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted rules do not meet any of these requirements: there are no federal standards for the occupational licenses and registrations program administered by the commission; the rules do not exceed an express requirement of state law; there is no delegation agreement that would be exceeded by the rules; and the adopted rules would implement requirements of SB 162, HB 798, HB 1302, HB 1659, and HB 1846.

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

Takings Impact Assessment

The commission has prepared a takings impact assessment for these adopted rules pursuant to Texas Government Code, §2007.043. The specific purpose of these adopted rules is: to ensure consistency between the rules and their applicable statutes as amended by recent legislation; to address the procedure for granting licenses to military spouses; to

credit verified military service and training of military service members or veterans toward licensing requirements; to exempt Class C misdemeanors from the types of offenses considered to be convictions; to prohibit certain registered sex offenders from providing services in a person's residence unless supervised; to designate when an individual who has been charged with certain offenses where the proceedings have been dismissed may be considered to have a criminal conviction; to allow for new and evolving types of training methods; to address child support obligations an applicant must meet prior to issuance of a license or registration; to make grammatical and punctuation corrections; and to modify, reorganize, or add language to improve readability and enhance enforceability.

The adopted regulations do not affect a landowner's rights in private real property because this adopted rulemaking does not burden, 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. The adopted rules do not constitute a taking because they would not burden 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 or 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. No comments were received on the consistency with the Coastal Management Plan.

Public Comment

The commission held a public hearing in Austin on March 6, 2014. The comment period closed on March 18, 2014. The commission received comments from the Texas Water Utility Association (TWUA), which expressed opposition and suggested changes.

Response to Comments

Comment

TWUA suggested that the definition of "Supervision" include a requirement that the supervisor be able to have real time personal interaction with the individual being supervised.

Response

The adopted rule text incorporates language from HB 1302, 83rd Legislature, which amended Texas Code of Criminal Procedure, §62.063. The definition allows for the method of supervision to meet various job site circumstances,

the rules cannot prescribe for every situation. No changes were made in response to this comment.

Comment

TWUA suggested adding language that would require a qualified classroom instructor to hold appropriate TCEQ-issued A or B operator's license for the subject matter being taught.

Response

This suggestion is beyond the scope of this rulemaking, but may be considered in future rulemaking. No changes were made in response to this comment.

Comment

TWUA suggested adding language that would require a subject matter expert to have three years of actual hands-on work-related experience in the subject area being taught.

Response

This suggestion is beyond the scope of this rulemaking, but may be considered in future rulemaking. No changes were made in response to this comment.

Comment

TWUA commented that allowing individuals to take a test more than four times in a calendar year is to be commended; however, according to TWUA, the commission should consider requiring an individual who has failed an examination four times to take additional training, participate in remedial review, or other assistance before retaking the examination.

Response

The commission disagrees with the comment. The adopted rule text incorporates existing rule text which does not require additional training. The commission has determined that allowing applicants to take the same examination more than four times in a calendar year will provide additional employment opportunities to certain individuals without compromising human health or the environment. Applicants currently have the option to take remedial training; therefore, this option will not be impacted. No changes were made in response to this comment.

Comment

TWUA commented that individuals should not be allowed to take the same examination consecutively in one sitting. According to TWUA, taking the same examination consecutively allows the individual to guess the correct answer.

Response

The current examination process contains practical restrictions which may make it difficult for an individual to take the same examination consecutively. Individuals must register for a seat at a testing center before taking an examination. Before retaking the examination, an individual must wait for notification of failure and then register for a seat at the testing center, which may or may not have availability that same day. Additionally, the commission currently allows consecutive attempts for select computer- based examinations. No changes were made in response to this comment.

Comment

TWUA commented that being charged with a crime is not the same as being convicted of a crime.

Response

The adopted rule text incorporates language from HB 1659, 83rd Legislature which amended Texas Occupations Code, §53.021(d). No changes were made in response to this comment.

Comment

TWUA disagrees with removing the current 45-day requirement for the executive director

to determine if a renewal application is complete. According to TWUA, the 45 days is necessary to make the licensing process work, however TWUA stated that they could support extending the deadline to 60 days.

Response

The commission appreciates the comment and notes that the 45-day timeline will continue as internal policy. No changes were made in response to this comment.

Comment

TWUA commented that having a mechanism in place for accepting fingerprints would expedite the executive director's processing of criminal histories.

Response

Applicants currently have an option to submit their criminal history results by using a fingerprint contractor; this option will not be impacted. No changes were made in response to this comment.

Comment

TWUA suggested that the commission add verbiage requiring that training must be approved operator training as defined by TCEQ.

Response

This suggestion is beyond the scope of this rulemaking, but may be considered in future rulemaking. No changes were made in response to this comment.

Comment

TWUA commented that paper-based correspondence training is obsolete, that the use of the honor system for paper-based correspondence training is outdated and that getting someone to sign off on a practical exercise is not the same as having to establish identity and assure participation or competency.

Response

The commission disagrees. The commission has determined that there is still a need for paper-based correspondence training for individuals in rural areas as well as for individuals who do not have access or are not comfortable with technology-based correspondence training. The adopted rule incorporates existing rule language, which requires correspondence providers to provide acceptable procedures for participant identity verification as a requirement for course approval. No changes were made in response to this comment.

Comment

TWUA suggested that the commission clarify whether an individual may take the same core training within the renewal period, provided the training does not use the same performance-based assessment.

Response

This suggestion is beyond the scope of this rulemaking, but may be considered in future rulemaking. No changes were made in response to this comment.

Comment

TWUA recommended that §30.33(a) be amended to provide that the executive director shall deny an application for the reasons listed in paragraphs (1) and (2).

Response

This suggestion is beyond the scope of this rulemaking. No changes were made in response to this comment.

Comment

TWUA commented that if an operator's license has been revoked, they should not be able to reapply and take another exam. According to TWUA, there should be a stated period of time of not less than one year and preferably two years (or longer) in which the person who participated in these prohibited acts is not eligible to hold a water or wastewater operator's

license.

Response

This suggestion is beyond the scope of this rulemaking. No changes were made in response to this comment.

Comment

TWUA commented that if the reason the executive director revoked a license is because the individual failed to pay child support, the executive director should reinstate the license as soon as the accounts are current.

Response

The commission does not revoke licenses for failure to pay child support. In certain circumstances the commission may suspend a license for failure to pay child support; however, the commission must comply with the requirements in the Texas Family Code regarding both suspension and reinstatement of a license for failure to pay child support. This suggestion is beyond the scope of this rulemaking, but may be considered in future rulemaking. No changes were made in response to this comment.

Comment

TWUA commented that anyone charged with or convicted of a crime that would require them to register as a sex offender or with a probation office or anyone charged with or convicted of any violent crime be prohibited from either offering or providing service in a residence unless directly supervised.

Response

The adopted rule text incorporates language from HB 1302, 83rd Legislature which amended Texas Occupations Code, §53.021(d). No changes were made in response to this comment.

**SUBCHAPTER A: ADMINISTRATION OF OCCUPATIONAL
LICENSES AND REGISTRATIONS
§§30.5, 30.7, 30.14, 30.18, 30.20, 30.24, 30.26,
30.28, 30.30, 30.33, AND 30.36**

Statutory Authority

The rules 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, concerning General Policy, 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 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 to 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 of administering and enforcing the provisions of TWC; Texas Code of Criminal Procedure, §62.063, concerning Prohibited Employment, which prohibits certain types of employment for individuals with a conviction or adjudication of a crime covered under the Sex Offender Registration Program with a victim younger than 14; Texas Family Code, §232.011, concerning Action by Licensing Authority, which provides the commission the authority to suspend a license upon receipt of a final order from a Title IV-D agency; Texas Family Code, §232.0135, concerning Denial of License Issuance or 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; Texas Occupations Code, §53.021(a-1), concerning Authority to Revoke, Suspend, or Deny License, which allows the commission to revoke, suspend, or deny a license to a person who has been convicted of an offense other than a Class C misdemeanor; Texas Occupations Code, §53.021(d), concerning Authority to Revoke, Suspend, or Deny License, which allows the commission to consider a person to have been convicted of an offense regardless of whether the proceedings were dismissed if the person was charged with an offense that would require the person to register as a sex offender; Texas Occupations

Code, §55.005, concerning Expedited License Procedure for Military Spouses which requires the commission to, as soon as practicable, process the application of and issue a license to a qualified military spouse; Texas Occupations Code, §55.006, concerning Renewal of Expedited License Issued to Military Spouse, which requires the commission to, as soon as practicable, notify the military spouse of the renewal requirements; and Texas Occupations Code, §55.007, concerning License Eligibility Requirements for Applicants with Military Experience, which requires the commission to consider verified military service, training, or education when processing licensing applications.

The adopted rules implement requirements in House Bill (HB) 798, 83rd Legislature, 2013, which added Texas Occupations Code, §53.021(a-1); HB 1302, 83rd Legislature, 2013, which added Texas Code of Criminal Procedure, §62.063; HB 1659, 83rd Legislature, 2013, which amended Texas Occupations Code, §53.021(d); HB 1846, 83rd Legislature, 2013, which amended Texas Family Code, §232.0135(b); and SB 162, 83rd Legislature, 2013, which added Texas Occupations Code, §§55.001, 55.005, 55.006, and 55.007.

§30.5. General Provisions.

(a) A person must be licensed or registered by the commission before engaging in an activity, occupation, or profession described by Texas Water Code, §§26.0301, 26.345, 26.452, 26.456, Texas Health and Safety Code, §§341.033, 341.034, 361.027, 366.071,

366.0515, or Texas Occupations Code, §1903.251 and §1904.051. The commission shall issue a license or registration only after an applicant has met the minimum requirements for a license or registration as specified in this chapter.

(b) A person shall not advertise or represent themselves to the public as a holder of a license or registration unless that person possesses a current license or registration. A person shall not advertise or represent to the public that it can perform services for which a license or registration is required unless it holds a current license or registration, or unless it employs individuals who hold current licenses.

(c) The executive director may contract with persons to provide services required by this chapter. The commission may authorize contractors to collect reasonable fees for the services provided.

(d) Licenses and registrations are not transferable.

(e) New licenses shall not be issued to employees of the commission who have regulatory authority over the rules of this chapter. Commission employees may maintain a license if that license was issued prior to employment with the commission.

(f) Prohibited Employment.

(1) Individuals subject to registration under the Texas Code of Criminal Procedure, Chapter 62 because of a reportable conviction or adjudication for which an affirmative finding is entered under Texas Code of Criminal Procedure, Article 42.015(b) or Section 5(e)(2), Article 45.12, and licensed after September 1, 2013, may not, for compensation, provide or offer to provide any type of service in the residence of another person unless the provision of service will be supervised.

(2) For purposes of this subsection.

(A) "Residence" means a structure primarily used as a permanent dwelling and land that is contiguous to that permanent dwelling.

(B) "Supervision" means direct, continuous visual observation of the individual at all times.

§30.7. Definitions.

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

(1) Approved training event--Instructor-led classroom training, conferences, seminars, workshops, training at association meetings, distance learning, or technology-based training providing the knowledge and skills needed to perform occupational job tasks and that has been reviewed and approved by the executive director.

(2) Aerobic treatment system owner--Persons that in their individual capacities own a single-family dwelling that is serviced by an on-site sewage disposal system using aerobic treatment.

(3) Conference--The term conference as used in the context of this chapter includes conferences, seminars, workshops, symposiums, expos, interactive video conferences and any other such training venues.

(4) Continuing education--Job-related training approved by the executive director used for renewal of licenses and registrations.

(5) Distance learning--The acquisition of knowledge that occurs through various technologies with a separation of place and/or time between the instructor(s) or learning resources and the learner.

(6) Distributor--Any person or nongovernmental organization that sells a product primarily to individuals maintaining occupational licenses administered by the agency.

(7) High school diploma or equivalent certificate--A graduation diploma from a high school or a General Educational Development (GED) certification from an accrediting agency recognized by the United States Department of Education or other respective territory's or country's accreditation process if outside the United States.

(8) Industry-related association--A nonprofit organization that represents members that possess occupational licenses issued by the agency.

(9) License--An occupational license issued by the commission to a person authorizing the person to engage in an activity covered by this chapter.

(10) Maintenance provider--A person that, for compensation, provides service or maintenance for one or more on-site sewage disposal systems using aerobic treatment.

(11) **Manufacturer**--For the purpose of this subchapter any person, company, or nongovernmental organization that produces a product for sale primarily to individuals who maintain occupational licenses that are administered by the agency.

(12) **Person**--As defined in §3.2 of this title (relating to Definitions).

(13) **Qualified classroom instructor**--An individual who has instructional experience, work-related experience, and subject matter expertise that enable the individual to communicate course information in a relevant, informed manner and to answer students' questions.

(14) **Registration**--An occupational registration issued by the commission to a person authorizing the person to engage in an activity covered by this chapter.

(15) **Service provider**--Any person, company, or nongovernmental organization that provides a service for its own profit to individuals who maintain occupational licenses that are administered by the agency.

(16) **Subject matter expert**--A person having a minimum of three years of work-related experience and expert knowledge in a particular content area or areas as relates to training.

(17) Training credit--Hours of credit allowed by the executive director for successful completion of an approved training event.

(18) Technology-based training--Training offered through computer equipment or through a Web site (also known as on-line training or e-learning).

(19) Training provider--An administrative entity or individual responsible for obtaining approval of training, providing acceptable delivery of approved training, ensuring that qualified instructors or subject matter experts are utilized in the delivery, support, and development of training and monitoring, recording and reporting attendance accurately and promptly as required by the executive director.

(20) Webinar--Interactive training delivered live via the Internet as a combination of conference training and distance learning where the learner is separated by place from the learning source. Successful completion of webinar training may only be credited toward training requirements for license renewals.

§30.14. Applications for Initial Registration.

(a) Applications for initial registrations shall be made on a standard form approved by the executive director. The application must be submitted to the executive director with the appropriate fee.

(b) Supplemental information for each individual program shall be submitted according to the specific requirements for each program.

(c) All statements and qualifications provided by the applicant or on the behalf of the applicant are subject to verification by the executive director.

(d) All statements, qualifications, and attachments provided by the applicant relating to an application shall be true, accurate, complete, and contain no misrepresentation or falsification.

(e) Misrepresentation or falsification of any information may be grounds for denial of an application and for enforcement action.

(f) All applications must be completed in full. All deficiencies must be corrected within 60 days of notification, or the application shall be considered void.

(g) The executive director shall determine whether an applicant meets the

requirements of this subchapter. If all requirements have been met, the executive director shall issue the registration. The registration shall be valid for the term specified in Subchapters B - L of this chapter (relating to Backflow Prevention Assembly Testers, Customer Service Inspectors, Landscape Irrigators, Installers, Irrigation Technicians and Irrigation Inspectors, Leaking Petroleum Storage Tank Corrective Action Project Managers and Specialists, Municipal Solid Waste Facility Supervisors, On-Site Sewage Facilities Installers, Apprentices, Designated Representatives, Maintenance Providers, Maintenance Technicians, and Site Evaluators. Water Treatment Specialists, Underground Storage Tank On-Site Supervisor Licensing and Contractor Registration, Wastewater Operators and Operations Companies, Public Water System Operators and Operations Companies, Visible Emissions Evaluator Training and Certification, respectively.) The effective date of the registration shall be the date the executive director issues the registration.

§30.18. Applications for an Initial License.

(a) Applications for initial licenses shall be made on a standard form provided by the executive director. The application must be submitted to the executive director with the fee according to §30.30 of this title (relating to Terms and Fees for Licenses and Registrations). The application must be submitted to the executive director before the applicant may take the examination.

(b) Supplemental information for each individual program shall be submitted according to the specific requirements for each program.

(c) An approved application shall be valid for one year from the date of application approval.

(d) All statements and qualifications provided by each applicant or on the behalf of the applicant are subject to verification by the executive director.

(e) All statements, qualifications, and attachments provided by the applicant relating to an application shall be true, accurate, complete, and contain no misrepresentation or falsification.

(f) Misrepresentation or falsification of any information may be grounds for denial of an application and for enforcement action.

(g) All applications must be completed in full. All deficiencies must be corrected within 120 days of notification, or the application shall be considered void.

(h) An applicant must furnish evidence of any training credit, proof of education, or work experience when requested.

(i) The executive director shall determine whether an applicant meets the requirements of this subchapter. If all requirements have been met, the executive director shall issue the license. The license shall be valid for the term specified in Subchapters B - L of this chapter (relating to Backflow Prevention Assembly Testers, Customer Service Inspectors, Landscape Irrigators, Installers, Irrigation Technicians and Irrigation Inspectors, Leaking Petroleum Storage Tank Corrective Action Project Managers and Specialists, Municipal Solid Waste Facility Supervisors, On-Site Sewage Facilities Installers, Apprentices, Designated Representatives, Maintenance Providers, Maintenance Technicians, and Site Evaluators. Water Treatment Specialists, Underground Storage Tank On-Site Supervisor Licensing and Contractor Registration, Wastewater Operators and Operations Companies, Public Water System Operators and Operations Companies, Visible Emissions Evaluator Training and Certification, respectively.) The effective date of the license shall be the date the executive director issues the license.

§30.20. Examinations.

(a) The executive director shall prescribe the content of licensing examinations.

Examinations shall be based on laws, rules, job duties, and standards relating to the particular license.

(b) Examinations shall be graded and the results forwarded to the applicant no later than 45 days after the examination date. The minimum passing score for an examination is 70%.

(c) An individual with an approved application who fails an examination may not repeat an examination until receiving notification of examination results for that particular examination.

(d) The application becomes void either after 365 days from date of application or failing the same examination four times, whichever occurs first. If an application becomes void, a new fee and a new application must be submitted before the applicant may take the same examination again.

(e) Any scores for repeat examinations taken after an application becomes void will not be applied to the issuance of the license.

(f) Any qualified applicant with a physical, mental, or developmental disability may request reasonable accommodations to take an examination.

(g) Examinations shall be given at places and times approved by the executive director.

(h) The executive director shall provide an analysis of an examination when requested in writing by the applicant. The executive director shall ensure that an examination analysis does not compromise the fair and impartial administration of future examinations.

(i) An individual who wishes to observe a religious holy day on which the individual's religious beliefs prevent the individual from taking an examination scheduled by the agency on that religious holy day shall be allowed to take the examination on an alternate date.

(j) The executive director may deny an individual the opportunity to take a licensing examination on the grounds that the individual has been convicted of an offense, other than an offense punishable as a Class C misdemeanor, that:

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

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

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

(k) The executive director may deny an individual the opportunity to take a licensing examination on the grounds that:

(1) the individual was charged with:

(A) any offense described by Texas Code of Criminal Procedure, Article 62.001(5); or

(B) an offense other than an offense described by subparagraph (A) of this paragraph if:

(i) the individual has not completed the period of supervision or the individual completed the period of supervision less than five years before the date the individual applied for the license; or

(ii) a conviction for the offense would make the individual ineligible for the license by operation of law; and

(2) after consideration of the factors described by Texas Occupations Code, §§53.021(d), 53.022, and 53.023(a), the executive director determines that:

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

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

§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.

(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.

(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; Licenses for Military Spouses; Military Service Members; Military Veterans.

(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) Military Spouses.

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

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

(B) 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.

(2) A license issued under this subsection shall be valid for the term specified in §30.18(i) of this title (relating to Applications for an Initial License).

(3) The executive director shall notify the license holder of the requirements for renewing a license issued under this subsection as specified in §30.24(b)(1) of this title (relating to License and Registration Applications for Renewal).

(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.

(g) Military service members or military veterans. The executive director shall credit verified military service, training, or education toward the licensing requirements.

(1) Verified military service, training, or education shall not be credited toward an examination requirement.

(2) The executive director may not apply this credit provision to an applicant who:

(A) holds a restricted license issued by another jurisdiction; or

(B) has an unacceptable criminal history.

§30.28. Approval of Training.

(a) The executive director shall approve training that provides the knowledge or skills necessary to obtain or maintain licenses or registrations that are issued by the commission. This training shall be directly related to tasks performed by persons whose duties require a license or registration in a program that is administered by the commission.

(1) Within 45 days of the receipt of an application for approval for conferences, or association meeting training, the executive director shall notify the training provider of the approval of the training or any deficiencies in the application or supporting documentation.

(2) Within 120 days of the receipt of an application for approval for classroom, distance learning or technology based training the executive director shall

notify the training provider of the approval of the training or any deficiencies in the application or supporting documentation.

(b) Training credit may be approved by the executive director for successful completion of:

(1) classroom training , and training at conferences;

(2) computer or Web-based training, correspondence courses, or similar distance learning training;

(3) training at association meetings, only when the meetings include training sessions containing subject matter related to the particular license; or

(4) other professional activities, such as publication of articles or teaching classroom training courses.

(c) The executive director shall determine the number of hours of training credit that will be granted for approved training. The executive director may:

(1) request field testing data from training providers to substantiate the hours requested; and

(2) use subject matter expert qualifications to determine the training credit awarded.

(d) Applications for training approval or approval of new training material must:

(1) be made on a standard form provided by the executive director;

(2) be submitted to the executive director with the applicable fee found in the chart contained in subsection (y)(6) of this section;

(3) be accompanied by supplemental information and materials according to the specific requirements for each type of training as approved by the executive director;

(4) contain supplemental materials and information edited by subject matter experts; and

(5) include samples of certificates of completion including information as required by the executive director.

(e) Once training is approved, a training provider may offer the training as approved without notification to the executive director.

(f) Training is considered approved until the content changes, or until the executive director notifies the training provider that changes in the content or presentation of the training event are necessary.

(g) If a training provider changes the delivery method of the training, the training must be resubmitted for review and approval by the executive director.

(h) The executive director may require training providers to update training or training materials to ensure that the content reflects current technology and practices.

(i) Training providers shall:

(1) keep manuals and training content updated to reflect rule changes;

(2) resubmit for approval training material that makes any reference to rules within 180 days of any new rule adoption that pertains to that training;

(3) resubmit materials with substantial changes for review and reapproval by the executive director accompanied by a summary, list, or other indication of significant changes;

(4) be responsible for the content and delivery of the training;

(5) retain accurate training records for a minimum of five years;

(6) maintain records of training approval throughout the entire period the training provider actively provides training;

(7) notify students of all fees associated with completing and obtaining credit for training before and during the training;

(8) accurately present to students approved training credit along with any other criteria for obtaining the credit;

(9) ensure that classroom instructors are qualified and provide the agency with instructor qualifications when requested;

(10) inform licensees that distance learning training repeated within the renewal period will not receive training credit if the training uses the same performance-based assessment;

(11) allow agency staff or their agents access to training events in order to audit training content, manner of presentation, and instructor effectiveness and qualifications;

(12) verify participation and report the participant's training credit hours not to exceed approved training credit hours; and

(13) provide to the executive director electronic rosters of training events within 14 business days after a participant's successful completion of the training event per procedures provided and approved by the executive director.

(j) Training events shall not be advertised as approved until notice of approval is received from the executive director.

(k) The executive director may recall training for reevaluation which may result in rescinding the previous approval of the training.

(l) Training used to meet the requirements for obtaining or renewing a license must:

(1) be approved by the executive director before the training begins;

(2) provide the knowledge or skills necessary to perform one or more of the occupation's critical job tasks as determined by a job analysis or training needs assessment;

(3) not promote or endorse the products, product lines, or services of a manufacturer, distributor, or service provider or used as an opportunity for advertisement;

(4) provide the means to accomplish the learning objectives identified for the training;

(5) include, but are not limited to, visual aids, graphics, and interactivity to enhance learning and attain learning objectives;

(6) include regular monitoring of participant comprehension throughout the training with feedback from the training provider, instructor, or subject matter expert;

(7) be monitored for successful participant completion and completed training credit reported to the agency by the approved training provider; and

(8) utilize, at a minimum, subject matter experts and instructional design experts or effective qualified classroom instructors to develop training materials for approval. Additionally, development for technology-based training must also utilize experts in technology.

(m) Classroom training, training providers, and classroom instructors must meet all requirements as detailed in this section, but are exempt from the requirements in subsections (n), (o), (p), (q), (r), and (s) of this section.

(1) Classroom training must not be held in a place of business of a product manufacturer, distributor, or service provider directly related to the occupational license. Water, wastewater, and solid waste facilities are exempted and applicable approved training may be held at these facilities.

(2) The agency may approve high school vocational education courses if their content follows the guidance of the respective licensing program area and meets training requirements in this chapter.

(n) Conference training, training providers, and subject matter experts must meet all requirements as detailed in this section, but are exempt from the requirements in subsections (m), (o), (p), (q), (r), and (s) of this section.

(1) Training at conferences may be submitted for approval by:

(A) governmental entities or their designated agents;

(B) industry-related associations; or

(C) colleges listed by accrediting agencies that are recognized by the United States Department of Education.

(2) The executive director may award training credits for successful completion of in-state and out-of-state conferences.

(3) To receive training credits for in-state and out-of-state conferences, the training must be approved by the executive director prior to the conference.

(4) Training at conferences will be approved for a specified number of training credits.

(5) To be approved, a conference must contain a minimum of three hours of approvable training.

(6) If the executive director determines the conference training is more appropriately presented as classroom training, the training provider may be required to meet requirements as detailed in subsection (m) of this section.

(7) The conference is considered approved until content, presenters, or duration changes.

(8) The conference training must not be held in a place of business of a product manufacturer, distributor, or service provider directly related to the occupational license.

(o) Training at association meetings, training providers, and subject matter experts must meet all requirements as detailed in this section, but are exempt from the requirements in subsections (m), (n), (p), (q), (r), and (s) of this section.

(1) Training sessions conducted at regular and special meetings of industry-related associations whose members hold licenses that are issued by the commission may be approved per event or on an annual basis.

(2) Associations may apply annually for approval of training at meetings. If not approved annually, training at individual meetings may be approved, so long as approval is requested in writing at least 45 days before the meeting as detailed in subsection (d) of this section.

(3) Training at association meetings must be presented by subject matter experts.

(4) Training at association meetings over two hours must meet requirements in subsection (n) of this section.

(5) The training at association meeting must not be held in a place of business of a product manufacturer, distributor, or service provider directly related to the occupational license.

(p) Distance learning training, training providers, and training materials must meet all requirements as detailed in this section, but are exempt from the requirements in subsections (m), (n), (o), and (s) of this section.

(1) Distance learning training may only be submitted for approval by:

(A) governmental entities or their designated agents;

(B) industry-related associations;

(C) colleges listed by accrediting agencies that are recognized by the United States Department of Education; or

(D) other entities, as determined by the executive director, who can demonstrate comparable or subject matter expertise, knowledge of and experience with educational principles and effective instructional design.

(2) Applications for distance learning training approval must be accompanied by the supplemental materials as approved by the executive director for either correspondence or technology-based training.

(3) Distance learning training:

(A) may not be substituted for actual hands-on training, if hands-on training is necessary to teach required manual skills;

(B) must provide students within one business day access to subject matter experts;

(C) repeated within the renewal period will not receive training credit if the training uses the same performance-based assessment; and

(D) must maintain procedures to protect student identity if using the Internet.

(q) Correspondence training, training providers, and training materials must meet all requirements as detailed in this section, but are exempt from the requirements in subsections (m), (n), (o), (r), and (s) of this section. Correspondence training is distance learning that can either be paper-based conducted through a postal system, electronic-based conducted through a Web site, or a blend of these delivery systems and shall:

(1) make available a text or training manual to students for training with any delivery system; and

(2) provide acceptable procedures for participant identity verification.

(r) Technology-based training must meet all requirements as detailed in this section, but are exempt from the requirements in subsections (m), (n), (o), (p), and (s) of this section, and shall provide:

(1) access to the agency if provided via the Internet;

(2) tracking of student time and progress required for training completion;

(3) acceptable procedures for participant identity verification;

(4) criteria for successful training completion; and

(5) access within one business day to technical support and subject matter experts.

(s) Webinar training, training providers, and training materials must meet all

requirements as detailed in this section, but are exempt from the requirements in subsections (m), (n), (o), (p), (q), and (r) of this section.

(1) Webinar training may only be submitted for approval by:

(A) governmental entities or their designated agents;

(B) industry-related associations; or

(C) colleges listed by accrediting agencies that are recognized by the United States Department of Education.

(2) Applications for webinar training approval must be accompanied by the supplemental materials as approved by the executive director.

(3) Webinar training:

(A) may only be used to meet training credit requirements for renewal of a license and may not be used to meet the educational requirements for an initial license; and

(B) must provide students access to subject matter experts.

(4) The same webinar training may not be repeated within the renewal period for training credit.

(5) The webinar training provider must maintain procedures to protect student identity.

(t) Printed training material must be presented in an original manner and must be relevant to the necessary tasks and knowledge for the occupational licensees.

(u) Public information copied from Web sites or other sources is not acceptable as training materials unless modified to be applicable to the target audience and the method of delivery.

(v) If training materials submitted to the executive director for approval are copyrighted materials, the training provider is responsible for obtaining proper approval from the publisher to reprint text, pictures, graphics, tables, data, and any other information that is obtained from a source that is not an original creation of the training provider. The training materials submitted shall include appropriate references.

(w) Under the Public Information Act, copyrighted training materials submitted to the executive director may be inspected by the public. The agency will not provide copies of copyrighted materials to the public unless required to do so as a result of legal action.

(x) The executive director may:

(1) return without approval, training courses and training material determined to contain extensive errors or not meeting the requirements of this section;

(2) monitor, recall, reevaluate, and/or rescind approval of topics or training materials provided at approved training; and

(3) recall rescind, suspend, or deny training approval for good cause, which includes, but is not limited to:

(A) the training does not conform to current accepted industry standard practices or agency rules;

(B) the training does not conform to the materials as approved;

(C) the subject matter is not related to critical job tasks performed by licensees;

(D) an instructor is not qualified to teach the subject matter;

(E) an instructor is ineffective in the delivery of the subject matter;

(F) the training promotes or endorses products, product lines, or services from a manufacturer, distributor, or service provider;

(G) participation records are not submitted as required by subsection (i)(13) of this section;

(H) records, rosters, or application materials have been falsified;

(I) noncompliance with a training recall;

(J) the training provider is not active or the training has not been conducted for three or more years; or

(K) the training environment is not conducive to learning.

(y) Fees for training approval will be assessed based on requested training credit hours available for the event with the exception of annual review and approval of training at association meetings. If the requested hours are significantly different than the actual hours of training awarded, the executive director may request an adjustment in the fee from the applicant.

(1) Fees must be submitted with the application and supplemental materials as detailed in paragraph (6) of this subsection.

(2) Fees are nonrefundable whether the training event is approved or not approved.

(3) The review and approval of training may require both an administrative review for application package completeness and a technical review for compliance with the requirements and standards detailed in this section. The fee will include both of these reviews.

(4) The application will become void and the fee forfeited if an applicant does not respond within 60 days of the notification provided by the executive director of any deficiencies in the application.

(5) Any training material submitted for approval after January 1, 2008, requires submittal of the applicable fees listed in paragraph (6) of this subsection.

(6) The greater of the following fees must be submitted with each application for approval of training for occupational licensing depending on the type of training as outlined in the following table.

Figure: 30 TAC §30.28(y)(6)

Type of Training	Fee Amount
Association Meetings - training sessions up to (2) two hours (over two hours, see conferences)	\$10 per training credit hour
Association Meetings - annual review for single chapter, section, or district with 12 or less meetings per year	\$100 per annual review application
Association Meetings - annual review for multiple chapters, sections, or districts with 12 or less meetings per year for each	\$400 per annual review application
Conferences	\$10 per training credit hour or a minimum of \$50
Classroom Training - using existing approved manuals.	\$10 per training credit hour or a minimum of \$50

Classroom Training with new manuals and new materials	\$25 per training credit hour or a minimum of \$100
Technology-Based Training	\$25 per training credit hour or a minimum of \$100
Correspondence Courses	\$25 per training credit hour or a minimum of \$100
Webinar	\$50 for initial review, then \$10 per training credit hour for subsequent applications.

§30.30. Terms and Fees for Licenses and Registrations.

(a) Licenses and registrations are valid for three years from the date of issuance, unless specified otherwise by Subchapters B - L of this chapter (relating to Backflow Prevention Assembly Testers, Customer Service Inspectors, Landscape Irrigators, Installers, Irrigation Technicians and Irrigation Inspectors, Leaking Petroleum Storage Tank Corrective Action Project Managers and Specialists, Municipal Solid Waste Facility Supervisors, On-Site Sewage Facilities Installers, Apprentices, Designated Representatives, Maintenance Providers, Maintenance Technicians, and Site Evaluators, Water Treatment Specialists, Underground Storage Tank On-Site Supervisor Licensing and Contractor Registration, Wastewater Operators and Operations Companies, Public Water System

Operators and Operations Companies, Visible Emissions Evaluator Training and Certification, respectively).

(b) The executive director may adopt a system under which licenses or registrations expire on various dates.

(c) The license fee is \$111 for a three-year license. The total amount shall be paid with each initial and renewal application and is nonrefundable.

(d) Registration fees are established in the applicable subchapters of this chapter.

(e) The executive director may charge a \$20 fee to process a duplicate certificate or pocket card.

(f) A convenience fee may be set by the executive director or service provider for alternative fee payment methods. A person using an alternative payment method is responsible for paying the convenience fee.

(g) An examination or reexamination fee may be charged if the executive director designates an entity to administer the examinations.

(h) The executive director may charge an individual requesting a criminal history evaluation letter under §30.13 of this title (relating to Eligibility of Certain Applicants for Occupational Licenses or Registrations) a fee adopted by the commission. Fees adopted by the commission under §30.13 of this title must be in an amount sufficient to cover the cost of administering §30.13 of this title.

§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 to overturn the executive director's decision under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision). 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; or

(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.

(b) If an individual 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 individual's permanent file maintained by the executive director. This letter shall be a warning that further violations or offenses by the individual 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 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.

(e) 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.

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

(1) If a license or registration expiration date falls within the suspension period, an individual 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 of this chapter.

(2) A license or registration suspended in accordance with subsection (j) 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 individual failed to renew the license or registration during the suspension period.

(g) Individuals 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, an individual may apply for a new license or registration according to this chapter.

(h) Criminal Conviction.

(1) After notice and hearing, the commission may deny, suspend, or revoke a license on the grounds that the individual has been convicted of an offense, other than a Class C misdemeanor that:

(A) directly relates to the duties and responsibilities of the licensed occupation;

(B) 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;

(C) is listed in Texas Code of Criminal Procedure, Article 42.12, Section 3g; or

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

(2) 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.

(3) Prohibited Employment.

(A) Individuals subject to registration under the Texas Code of Criminal Procedure, Chapter 62 because of a reportable conviction or adjudication for which an affirmative finding is entered under Texas Code of Criminal Procedure, Article 42.015(b) or Section 5(e)(2), Article 45.12, and licensed after September 1, 2013, may not,

for compensation, provide or offer to provide any type of service in the residence of another person unless the provision of service will be supervised.

(B) For purposes of this subsection:

(i) "Residence" means a structure primarily used as a permanent dwelling and land that is contiguous to that permanent dwelling.

(ii) "Supervision" means direct, continuous visual observation of the individual at all times.

(4) Except as provided by paragraph (5) of this subsection, 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:

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

(B) 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

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

(5) 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 paragraph (4) of this subsection if:

(A) the individual was charged with:

(i) any offense described by Texas Code of Criminal Procedure, Article 62.001(5); or

(ii) an offense other than an offense described by clause (i) of this subparagraph if:

(I) the individual has not completed the period of supervision or the individual completed the period of supervision less than five years before the date the individual applied for the license; or

(II) a conviction for the offense would make the individual ineligible for the license by operation of law; and

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

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

or

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

(i) 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).

(j) 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) made an immediate payment of not less than \$200 toward child support arrearages owed and established with the child support agency a satisfactory repayment schedule for the remainder 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.

(5) For purposes of this subsection, the suspension period for a license or registration shall be until:

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

(B) the expiration of the license or registration.

§30.36. Notice.

The executive director shall notify the individual in writing of the intent to suspend or revoke a license or deny the individual a license or the opportunity to be examined for a license because of the individual's prior conviction of a crime and the relationship of the crime to the license. The notification shall include, but not be limited to the:

(1) reason for the suspension, revocation, denial, or disqualification;

(2) review procedure provided by §30.35 of this title (relating to Guidelines);

and

(3) earliest date that the individual may appeal the action of the commission.

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

§30.33

Statutory Authority

The repeal is 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, concerning General Policy, 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 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 to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.009, concerning Fees, which provides the commission with the

authority to establish and collect fees to cover the cost of administering and enforcing the provisions of TWC; Texas Code of Criminal Procedure, §62.063, concerning Prohibited Employment, which prohibits certain types of employment for individuals with a conviction or adjudication of a crime covered under the Sex Offender Registration Program with a victim younger than 14; Texas Family Code, §232.011, concerning Action by Licensing Authority, which provides the commission the authority to suspend a license upon receipt of a final order from a Title IV-D agency; Texas Family Code, §232.0135, concerning Denial of License Issuance or 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; Texas Occupations Code, §53.021(a-1), concerning Authority to Revoke, Suspend, or Deny License, which allows the commission to revoke, suspend, or deny a license to a person who has been convicted of an offense other than a Class C misdemeanor; and Texas Occupations Code, §53.021(d), concerning Authority to Revoke, Suspend, or Deny License, which allows the commission to consider a person to have been convicted of an offense regardless of whether the proceedings were dismissed if the person was charged with an offense that would require the person to register as a sex offender.

The adopted repeal implements requirements in House Bill (HB) 798, 83rd Legislature, 2013, which added Texas Occupations Code, §53.021(a-1); HB 1302, 83rd Legislature, 2013, which added Texas Code of Criminal Procedure, §62.063; HB 1659, 83rd Legislature, 2013, which amended Texas Occupations Code, §53.021(d); and HB 1846, 83rd Legislature, 2013, which amended Texas Family Code, §232.0135(b).

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